

reporting under paragraph (b)(3) of this section, the trustee may not report under that paragraph if any portion of the trust has a short taxable year by reason of the death of the decedent and the portion treated as owned by the decedent does not terminate on the death of the decedent.

(i) *Effective date and transition rule*—

(1) *Effective date.* The trustee of a trust any portion of which is treated as owned by one or more grantors or other persons must report pursuant to paragraphs (a), (b), (c), (d)(1), (e), (f), and (g) of this section for taxable years beginning on or after January 1, 1996.

(2) *Transition rule.* For taxable years beginning prior to January 1, 1996, the Internal Revenue Service will not challenge the manner of reporting of—

(i) A trustee of a trust all of which is treated as owned by one or more grantors or other persons who did not report in accordance with § 1.671-4(a) (as contained in the 26 CFR part 1 edition revised as of April 1, 1995) as in effect for taxable years beginning prior to January 1, 1996, but did report in a manner substantially similar to one of the reporting methods described in paragraph (b) of this section; or

(ii) A trustee of two or more trusts all of which are treated as owned by one or more grantors or other persons who filed a single Form 1041 for all of the trusts, rather than a separate Form 1041 for each trust, provided that the items of income, deduction, and credit of each trust were shown on a statement attached to the single Form 1041.

(3) *Effective date for paragraphs (d)(2) and (h) of this section.* Paragraphs (d)(2) and (h) of this section apply for taxable years ending on or after December 24, 2002.

(j) *Cross-reference.* For rules relating to employer identification numbers, and to the obligation of a payor of income or proceeds to the trust to furnish to the payee a statement to recipient, see § 301.6109-1(a)(2) of this chapter.

[T.D. 8633, 60 FR 66087, Dec. 21, 1995, as amended by T.D. 8668, 61 FR 19191, May 1, 1996; T.D. 9032, 67 FR 78381, Dec. 24, 2002; T.D. 9241, 71 FR 4009, Jan. 24, 2006]

§ 1.671-5 Reporting for widely held fixed investment trusts.

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- (b) *Definitions.* Solely for purposes of this section:
 - (1) An *asset* includes any real or personal, tangible or intangible property held by the trust, including an interest in a contract.
 - (2) An *affected expense* is an expense described in § 1.67-2T(i)(1).
 - (3) A *beneficial owner* is a trust interest holder (TIH) (as defined in paragraph (b)(20) of this section) that holds a beneficial interest in a widely held fixed investment trust (WHFIT) (as defined in paragraph (b)(22) of this section.)
 - (4) The *calculation period* is the period the trustee chooses under paragraph (c)(1)(ii) of this section for calculating the trust information required to be

provided under paragraph (c) of this section.

(5) The *cash held for distribution* is the amount of cash held by the WHFIT (other than trust sales proceeds and proceeds from sales described in paragraphs (c)(2)(iv)(D)(4), (G), and (H) of this section) less reasonably required reserve funds as of the date that the amount of a distribution is required to be determined under the WHFIT's governing document.

(6) A *clean-up call* is the redemption of all trust interests in termination of the WHFIT when the administrative costs of the WHFIT outweigh the benefits of maintaining the WHFIT.

(7) An *exempt recipient* is—

(i) Any person described in §1.6049-4(c)(1)(ii);

(ii) A middleman (as defined in paragraph (b)(10) of this section);

(iii) A real estate mortgage investment conduit (as defined in section 860(D)(a)) (REMIC);

(iv) A WHFIT; or

(v) A trust or an estate for which the trustee or middleman of the WHFIT is also required to file a Form 1041, "U.S. Income Tax Return for Estates and Trusts," in its capacity as a fiduciary of that trust or estate.

(8) An *in-kind redemption* is a redemption in which a beneficial owner receives a pro-rata share of each of the assets of the WHFIT that the beneficial owner is deemed to own under section 671. For example, for purposes of this paragraph (b)(8), if beneficial owner A owns a one percent interest in a WHFIT that holds 100 shares of X corporation stock, so that A is considered to own a one percent interest in each of the 100 shares, A's pro-rata share of the X corporation stock for this purpose is one share of X corporation stock.

(9) An *item* refers to an item of income, expense, or credit as well as any trust event (for example, the sale of an asset) or any characteristic or attribute of the trust that affects the income, deductions, and credits reported by a beneficial owner in any taxable year that the beneficial owner holds an interest in the trust. An item may refer to an individual item or a group of items depending on whether the item must be reported separately under

paragraphs (c)(1)(i) and (e)(1) of this section.

(10) A *middleman* is any TIH, other than a qualified intermediary as defined in §1.1031(k)-1(g), who, at any time during the calendar year, holds an interest in a WHFIT on behalf of, or for the account of, another TIH, or who otherwise acts in a capacity as an intermediary for the account of another person. A middleman includes, but is not limited to—

(i) A custodian of a person's account, such as a bank, financial institution, or brokerage firm acting as custodian of an account;

(ii) A nominee;

(iii) A joint owner of an account or instrument other than—

(A) A joint owner who is the spouse of the other owner; and

(B) A joint owner who is the beneficial owner and whose name appears on the Form 1099 filed with respect to the trust interest under paragraph (d) of this section; and

(iv) A broker (as defined in section 6045(c)(1) and §1.6045-1(a)(1)), holding an interest for a customer in street name.

(11) A *mortgage* is an obligation that is principally secured by an interest in real property within the meaning of §1.860G-2(a)(5), except that a mortgage does not include an interest in another WHFIT or mortgages held by another WHFIT.

(12) A *non-mortgage widely held fixed investment trust* (NMWHFIT) is a WHFIT other than a widely held mortgage trust (as defined in paragraph (b)(23) of this section).

(13) A *non pro-rata partial principal payment* is any partial payment of principal received on a debt instrument which does not retire the debt instrument and which is not a pro-rata prepayment described in §1.1275-2(f)(2).

(14) The *redemption asset proceeds* equal the redemption proceeds (as defined in paragraph (b)(15) of this section) less the cash held for distribution with respect to the redeemed trust interest.

(15) The *redemption proceeds* equal the total amount paid to a redeeming TIH as the result of a redemption of a trust interest.

(16) A *requesting person* is—

(i) A middleman;

(ii) A beneficial owner who is a broker;

(iii) A beneficial owner who is an exempt recipient who holds a trust interest directly and not through a middleman;

(iv) A noncalendar-year beneficial owner who holds a trust interest directly and not through a middleman; or

(v) A representative or agent of a person specified in this paragraph (b)(16).

(17) The *sales asset proceeds* equal the sales proceeds (as defined in paragraph (b)(18) of this section) less the cash held for distribution with respect to the sold trust interest at the time of the sale.

(18) The *sales proceeds* equal the total amount paid to a selling TIH in consideration for the sale of a trust interest.

(19) The *start-up date* is the date on which substantially all of the assets have been deposited with the trustee of the WHFIT.

(20) A *trust interest holder* (TIH) is any person who holds a direct or indirect interest, including a beneficial interest, in a WHFIT at any time during the calendar year.

(21) *Trust sales proceeds* equal the amount paid to a WHFIT for the sale or disposition of an asset held by the WHFIT, including principal payments received by the WHFIT that completely retire a debt instrument (other than a final scheduled principal payment) and pro-rata partial principal prepayments described under § 1.1275-2(f)(2). Trust sales proceeds do not include amounts paid for any interest income that would be required to be reported under § 1.6045-1(d)(3). Trust sales proceeds also do not include amounts paid to a NMWHFIT as the result of pro-rata sales of trust assets to effect a redemption described in paragraph (c)(2)(iv)(G) of this section or the value of assets received as a result of a tax-free corporate reorganization as described in paragraph (c)(2)(iv)(H) of this section.

(22) A *widely held fixed investment trust* (WHFIT) is an arrangement classified as a trust under § 301.7701-4(c) of this chapter, provided that—

(i) The trust is a United States person under section 7701(a)(30)(E);

(ii) The beneficial owners of the trust are treated as owners under subpart E, part I, subchapter J, chapter 1 of the Internal Revenue Code; and

(iii) At least one interest in the trust is held by a middleman.

(23) A *widely held mortgage trust* (WHMT) is a WHFIT, the assets of which consist only of one or more of the following—

- (i) Mortgages;
- (ii) Regular interests in a REMIC;
- (iii) Interests in another WHMT;
- (iv) Reasonably required reserve funds;

(v) Amounts received on the assets described in paragraphs (b)(23)(i), (ii), (iii), and (iv) of this section pending distribution to TIHs; and

(vi) During a brief initial funding period, cash and short-term contracts for the purchase of the assets described in paragraphs (b)(23)(i), (ii), and (iii).

(c) *Trustee's obligation to report information*—(1) *In general*. Upon the request of a requesting person (as defined in paragraph (b)(16) of this section), a trustee of a WHFIT must report the information described in paragraph (c)(2) of this section to the requesting person. The trustee must determine such information in accordance with the following rules—

(i) *Calculation*. WHFIT information may be calculated in any manner that enables a requesting person to determine with reasonable accuracy the WHFIT items described in paragraph (c)(2) of this section that are attributable (or, if permitted under paragraphs (c)(2)(iv)(B) or (f)(2)(iii) of this section, distributed) to a beneficial owner for the taxable year of that owner. The manner of calculation must generally conform with industry practice for calculating the WHFIT items described in paragraph (c)(2) of this section for the type of asset or assets held by the WHFIT, and must enable a requesting person to separately state any WHFIT item that, if taken into account separately by a beneficial owner, would result in an income tax liability different from that which would result if the owner did not take the item into account separately.

(ii) *Calculation period*—WHFIT information may be calculated on the basis of a calendar month, calendar quarter,

or half or full calendar year, provided that a trustee uses the same calculation period for the life of the WHFIT and the information provided by the trustee meets the requirements of paragraph (c)(1)(i) of this section. Regardless of the calculation period chosen by the trustee, the trustee must provide information requested by a requesting person under paragraph (c)(5) on a calendar year basis. The trustee may provide additional information to requesting persons throughout the calendar year at the trustee's discretion.

(iii) *Accounting method*—(A) *General rule.* WHFIT information must be calculated and reported using the cash receipts and disbursements method of accounting unless another method is required by the Internal Revenue Code or regulations with respect to a specific trust item. Accordingly, a trustee must provide information necessary for TIHs to comply with the rules of subtitle A, chapter 1, subchapter P, part V, subpart A of the Internal Revenue Code, which require the inclusion of accrued amounts with respect to OID, and section 860B(b), which requires the inclusion of accrued amounts with respect to a REMIC regular interest.

(B) *Exception for WHFITs marketed predominantly to taxpayers on the accrual method.* If the trustee or the trust's sponsor knows or reasonably should know that a WHFIT is marketed primarily to accrual method TIHs and the WHFIT holds assets for which the timing of the recognition of income is materially affected by the use of the accrual method of accounting, the trustee must calculate and report trust information using the accrual method of accounting.

(iv) *Gross income requirement.* The amount of income required to be reported by the trustee is the gross income (as defined in section 61) generated by the WHFIT's assets. Thus, in the case of a WHFIT that receives a payment of income from which an expense (or expenses) has been deducted, the trustee, in calculating the income to be reported under paragraph (c)(2)(ii) of this section, must report the income earned on the trust's assets unreduced by the deducted expense or expenses and separately report the deducted expense or expenses. See para-

graph (c)(2)(iv) of this section regarding reporting with respect to sales and dispositions.

(2) *Information to be reported by all WHFITs.* With respect to all WHFITs—

(i) *Trust identification and calculation period chosen.* The trustee must report information identifying the WHFIT, including—

(A) The name of the WHFIT;

(B) The employer identification number of the WHFIT;

(C) The name and address of the trustee;

(D) The Committee on Uniform Security Identification Procedure (CUSIP) number, account number, serial number, or other identifying number of the WHFIT;

(E) The classification of the WHFIT as either a WHMT or NMWHFIT; and

(F) The calculation period used by the trustee.

(ii) *Items of income, expense, and credit.* The trustee must report information detailing—

(A) All items of gross income (including OID, except that OID is not required to be included for a WHMT that has a start-up date (as defined in paragraph (b)(19) of this section) prior to August 13, 1998).

(B) All items of expense (including affected expenses); and

(C) All items of credit.

(iii) *Non pro-rata partial principal payments.* The trustee must report information detailing non pro-rata partial principal payments (as defined in paragraph (b)(13) of this section) received by the WHFIT.

(iv) *Asset sales and dispositions.* The trustee must report information regarding sales and dispositions of WHFIT assets as required in this paragraph (c)(2)(iv). For purposes of this paragraph (c)(2)(iv), a payment (other than a final scheduled payment) that completely retires a debt instrument (including a mortgage held by a WHMT) or a pro-rata prepayment on a debt instrument (see § 1.1275-2(f)(2)) held by a WHFIT must be reported as a full or partial sale or disposition of the debt instrument. Pro-rata sales of trust assets to effect redemptions, as defined in paragraph (c)(2)(iv)(G) of

this section, or exchanges of trust assets as the result of a corporate reorganization under paragraph (c)(2)(iv)(H) of this section, are not reported as sales or dispositions under this paragraph (c)(2)(iv).

(A) *General rule.* Except as provided in paragraph (c)(2)(iv)(B) (regarding the exception for certain NMWHFITs) or paragraph (c)(2)(iv)(C) (regarding the exception for certain WHMTs) of this section, the trustee must report with respect to each sale or disposition of a WHFIT asset—

(1) The date of each sale or disposition;

(2) Information that enables a requesting person to determine the amount of trust sales proceeds (as defined in paragraph (b)(21) of this section) attributable to a beneficial owner as a result of each sale or disposition; and

(3) Information that enables a beneficial owner to allocate, with reasonable accuracy, a portion of the owner's basis in its trust interest to each sale or disposition.

(B) *Exception for certain NMWHFITs.* If a NMWHFIT meets paragraph (c)(2)(iv)(D)(1) (regarding the general de minimis test), paragraph (c)(2)(iv)(E) (regarding the qualified NMWHFIT exception), or paragraph (c)(2)(iv)(F) (regarding the NMWHFIT final calendar year exception) of this section, the trustee is not required to report under paragraph (c)(2)(iv)(A) of this section. Instead, the trustee must report sufficient information to enable a requesting person to determine the amount of trust sales proceeds distributed to a beneficial owner during the calendar year with respect to each sale or disposition of a trust asset. The trustee also must provide requesting persons with a statement that the NMWHFIT is permitted to report under this paragraph (c)(2)(iv)(B).

(C) *Exception for certain WHMTs.* If a WHMT meets either the general or the special de minimis test of paragraph (c)(2)(iv)(D) of this section for the calendar year, the trustee is not required to report under paragraph (c)(2)(iv)(A) of this section. Instead, the trustee must report information to enable a requesting person to determine the amount of trust sales proceeds attrib-

utable to a beneficial owner as a result of the sale or disposition. The trustee also must provide requesting persons with a statement that the WHMT is permitted to report under this paragraph (c)(2)(iv)(C).

(D) *De minimis tests—(1) General WHFIT de minimis test.* The general WHFIT de minimis test is satisfied if trust sales proceeds for the calendar year are not more than five percent of the net asset value of the trust (aggregate fair market value of the trust's assets less the trust's liabilities) as of the later of January 1 and the start-up date (as defined paragraph (b)(19) of this section); or, if the trustee chooses, the later of January 1 and the measuring date. The measuring date is the date of the last deposit of assets into the WHFIT (not including any deposit of assets into the WHFIT pursuant to a distribution reinvestment program), not to exceed 90 days after the date the registration statement of the WHFIT becomes effective under the Securities Act of 1933.

(2) *Special WHMT de minimis test.* A WHMT that meets the asset requirement of paragraph (g)(1)(ii)(E) of this section satisfies the special WHMT de minimis test in this paragraph (c)(2)(iv)(D)(2) if trust sales proceeds for the calendar year are not more than five percent of the aggregate outstanding principal balance of the WHMT (as defined in paragraph (g)(1)(iii)(D) of this section) as of the later of January 1 of that year or the trust's start-up date. For purposes of applying the special WHMT de minimis test in this paragraph (c)(2)(iv)(D)(2), amounts that result from the complete or partial payment of the outstanding principal balance of the mortgages held by the trust are not included in the amount of trust sales proceeds. The IRS and the Treasury Department may provide by revenue ruling, or by other published guidance, that the special de minimis test of this paragraph (c)(2)(iv)(D)(2) may be applied to WHFITs holding debt instruments other than those described in paragraph (g)(1)(ii)(E) of this section.

(3) *Effect of clean-up call.* If a WHFIT fails to meet either de minimis test described in this paragraph (c)(2)(iv)(D) solely as the result of a clean-up call,

as defined in paragraph (b)(6) of this section, the WHFIT will be treated as having met the de minimis test.

(4) *Exception for certain fully reported sales—(i) Rule.* If a trustee of a NMWHFIT reports the sales described in paragraph (c)(2)(iv)(D)(4)(ii) of this section as provided under paragraph (c)(2)(iv)(A) of this section (regardless of whether the general minimis test in paragraph (c)(2)(iv)(D)(1) of this section is satisfied for a particular calendar year) consistently throughout the life of the WHFIT, a trustee may exclude the trust sales proceeds received by the WHFIT as a result of those sales from the trust sales proceeds used to determine whether a WHFIT has satisfied the general de minimis test in paragraph (c)(2)(iv)(D)(1) of this section.

(ii) *Applicable sales and dispositions.* This paragraph (c)(2)(iv)(D)(4) applies to sales and dispositions resulting from corporate reorganizations and restructurings for which the trust receives cash, the sale of assets received by the trust in corporate reorganizations and restructurings (including conversions of closed-end investment companies to open-end investment companies), principal prepayments, bond calls, bond maturities, and the sale of securities by the trustee as required by the governing document or applicable law governing fiduciaries in order to maintain the sound investment character of the trust, and any other nonvolitional dispositions of trust assets.

(iii) *Certain small sales and dispositions.* If the amount of trust sales proceeds from a sale or disposition described in paragraph (c)(2)(iv)(D)(4)(ii) of this section is less than .01 percent of the net fair market value of the WHFIT as determined for applying the de minimis test for the calendar year, the trustee is not required to report the sale or disposition under paragraph (c)(2)(iv)(A) of this section provided the trustee includes the trust sales proceeds, received for purposes of determining whether the trust has met the general de minimis test of paragraph (c)(2)(iv)(D)(1) of this section.

(E) *Qualified NMWHFIT exception.* The qualified NMWHFIT exception is satisfied if—

(1) The NMWHFIT has a start-up date (as defined in paragraph (b)(19) of this section) before February 23, 2006;

(2) The registration statement of the NMWHFIT becomes effective under the Securities Act of 1933, as amended (15 U.S.C. 77a, *et seq.*) and trust interests are offered for sale to the public before February 23, 2006; or

(3) The registration statement of the NMWHFIT becomes effective under the Securities Act of 1933 and trust interests are offered for sale to the public on or after February 23, 2006, and before July 31, 2006, and the NMWHFIT is fully funded before October 1, 2006. For purposes of determining whether a NMWHFIT is fully funded under this paragraph (c)(2)(iv)(E), deposits to the NMWHFIT after October 1, 2006, that are made pursuant to a distribution reinvestment program that is consistent with the requirements of § 301.7701-4(c) of this chapter are disregarded.

(F) *NMWHFIT final calendar year exception.* The NMWHFIT final calendar year exception is satisfied if—

(1) The NMWHFIT terminates on or before December 31 of the year for which the trustee is reporting;

(2) Beneficial owners exchange their interests for cash or are treated as having exchanged their interests for cash upon termination of the trust; and

(3) The trustee makes reasonable efforts to engage in pro-rata sales of trust assets to effect redemptions.

(G) *Pro-rata sales of trust assets to effect a redemption—(1) Rule.* Pro-rata sales of trust assets to effect redemptions are not required to be reported under this paragraph (c)(2)(iv).

(2) *Definition.* Pro-rata sales of trust assets to effect redemptions occur when—

(i) One or more trust interests are tendered for redemption;

(ii) The trustee identifies the pro-rata shares of the trust assets that are deemed to be owned by the trust interest or interests tendered for redemption (See paragraph (b)(8) of this section for a description of how pro-rata is to be applied for purposes of this paragraph (c)(2)(iv)(G)) and sells those assets as soon as practicable;

(iii) Proceeds from the sales of the assets identified in paragraph

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(c)(2)(iv)(G)(2)(ii) of this section are used solely to effect redemptions; and

(iv) The redemptions are reported as required under paragraph (c)(2)(v) of this section by the trustee.

(3) *Additional rules—(i) Calendar month aggregation.* The trustee may compare the aggregate pro-rata share of the assets deemed to be owned by the trust interests tendered for redemption during the calendar month with the aggregate sales of assets to effect redemptions for the calendar month to determine the pro-rata sales of trust assets to effect redemptions for the calendar month. If the aggregate pro-rata share of an asset deemed to be owned by the trust interests tendered for redemption for the month is a fractional amount, the trustee may round that number up to the next whole number for the purpose of determining the pro-rata sales to effect redemptions for the calendar month;

(ii) *Sales of assets to effect redemptions may be combined with sales of assets for other purposes.* Sales of assets to effect redemptions may be combined with the sales of assets to obtain cash for other purposes but the proceeds from the sales of assets to effect redemptions must be used solely to provide cash for redemptions and the sales of assets to obtain cash for other purposes must be reported as otherwise provided in this paragraph (c)(2)(iv). For example, if a trustee sells assets and the proceeds are used by the trustee to pay trust expenses, these amounts are to be included in the amounts reported under paragraph (c)(2)(iv)(A) or (B), as appropriate.

(4) *Example—(i) January 1, 2008.* Trust has one million trust interests and all interests have equal value and equal rights. The number of shares of stock in corporations A through J and the pro-rata share of each stock that a trust interest is deemed to own as of January 1, 2008, is as follows:

| Stock | Total shares | Per trust interest |
|---------|--------------|--------------------|
| A | 24,845 | .024845 |
| B | 28,273 | .028273 |
| C | 35,575 | .035575 |
| D | 13,866 | .013866 |
| E | 25,082 | .025082 |
| F | 39,154 | .039154 |
| G | 16,137 | .016137 |
| H | 14,704 | .014704 |
| I | 17,436 | .017436 |

| Stock | Total shares | Per trust interest |
|---------|--------------|--------------------|
| J | 31,133 | .031133 |

(ii) *Transactions of January 2, 2008.* On January 2, 2008, 50,000 trust interests are tendered for redemption. The deemed pro-rata ownership of stocks A through J represented by the 50,000 redeemed trust interests and the stocks sold to provide cash for the redemptions are set out in the following table:

| Stock | Deemed pro-rata ownership | Shares sold |
|---------|---------------------------|-------------|
| A | 1,242.25 | 1,242 |
| B | 1,413.65 | 1,413 |
| C | 1,778.75 | 1,779 |
| D | 693.30 | 694 |
| E | 1,254.10 | 1,254 |
| F | 1,957.70 | 1,957 |
| G | 806.85 | 807 |
| H | 735.20 | 735 |
| I | 871.80 | 872 |
| J | 1,556.65 | 1,557 |

(iii) *Transactions on January 15 through 17, 2008.* On January 15, 2008, 10,000 trust interests are tendered for redemption. Trustee lends money to Trust for redemptions. On January 16, B merges into C at a rate of .55 per share. On January 17, Trustee sells stock to obtain cash to be reimbursed the cash loaned to Trust to effect the redemptions. The pro-rata share of the stock deemed to be owned by the 10,000 redeemed trust interests and the stock sold by the trustee to effect the redemptions are set out in the following table:

| Stock | Deemed pro-rata ownership | Shares sold |
|---------|---------------------------|-------------|
| A | 248.45 | 249 |
| B | 00 | 00 |
| C | 511.25 | 512 |
| D | 138.66 | 138 |
| E | 250.82 | 251 |
| F | 391.54 | 392 |
| G | 161.37 | 162 |
| H | 147.04 | 148 |
| I | 174.36 | 174 |
| J | 311.33 | 311 |

(iv) *Transactions on January 28 and 29, 2008.* On January 28, 2008, the value of the H stock is \$30.00 per share and Trustee, pursuant to Trust's governing document, sells the H stock to preserve the financial integrity of Trust and receives \$414,630. Trustee intends to report this sale under paragraph (c)(2)(iv)(A) of this section and to distribute the proceeds of the sale pro-rata to trust interest holders on Trust's next scheduled distribution date. On January 29, 2008, while trustee still holds the proceeds from the January 28 sale, 10,000 trust interests are tendered for redemption. The pro-rata share of

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the stock deemed to be owned by the 10,000 redeemed trust interests and the stock sold by the trustee to effect the redemptions are set out in the following table:

| Stock | Deemed pro-rata ownership | Shares sold |
|---------|---------------------------|-------------|
| A | 248.45 | 248 |
| B | 0 | 0 |
| C | 511.25 | 511 |
| D | 138.66 | 139 |
| E | 250.82 | 251 |
| F | 391.54 | 391 |
| G | 161.37 | 161 |
| H | 0 | 0 |
| I | 174.36 | 175 |
| J | 311.33 | 312 |

¹Share of cash proceeds: \$4,458.39.

(v) *Monthly amounts.* To determine the pro-rata sales to effect redemptions for January, trustee compares the aggregate pro-rata share of stocks A through J (rounded to the next whole number) deemed to be owned by the trust interests tendered for redemption during the month of January with the sales of stocks A through J to effect redemptions:

| Stock | Deemed pro-rata ownership | Shares sold |
|---------|---------------------------|-------------|
| A | 1740 | 1739 |
| B | 0 | 0 |
| C | 3579 | 3579 |
| D | 971 | 971 |
| E | 1756 | 1756 |
| F | 2741 | 2741 |
| G | 1130 | 1130 |
| H | 883 | 883 |
| I | 1221 | 1221 |
| J | 2180 | 2180 |

(vi) *Pro-rata sales to effect redemptions for the month of January.* For the month of January, the deemed pro-rata ownership of shares of stocks A through J equal or exceed the sales of stock to effect redemptions for the month. Accordingly, all of the sales to effect redemptions during the month of January are considered to be pro-rata and are not required to be reported under this paragraph (c)(2)(iv).

(H) *Corporate Reorganizations.* The exchange of trust assets for other assets of equivalent value pursuant to a tax free corporate reorganization is not required to be reported as a sale or disposition under this paragraph (c)(2)(iv).

(v) *Redemptions and sales of WHFIT interests—(A) Redemptions—(1) In general.* Unless paragraph (c)(2)(v)(C) of this section applies, for each date on which the amount of a redemption proceeds for the redemption of a trust interest is determined, the trustee must provide

information to enable a requesting person to determine—

(i) The redemption proceeds (as defined in paragraph (b)(15) of this section) per trust interest on that date;

(ii) The redemption asset proceeds (as defined in paragraph (b)(14) of this section) per trust interest on that date; and

(iii) The gross income that is attributable to the redeeming beneficial owner for the portion of the calendar year that the redeeming beneficial owner held its interest (including income earned by the WHFIT after the date of the last income distribution.

(2) *In kind redemptions.* The value of the assets received with respect to an in-kind redemption (as defined in paragraph (b)(8) of this section) is not required to be reported under this paragraph (c)(2)(v)(A). Information regarding the income attributable to a redeeming beneficial owner must, however, be reported under paragraph (c)(2)(v)(A)(1)(iii) of this section.

(B) *Sale of a trust interest.* Under paragraph (c)(2)(v)(C) of this section applies, if a secondary market for interests in the WHFIT is established, the trustee must provide, for each day of the calendar year, information to enable requesting persons to determine—

(1) The sale assets proceeds (as defined in paragraph (b)(17) of this section) per trust interest on that date; and

(2) The gross income that is attributable to a selling beneficial owner and to a purchasing beneficial owner for the portion of the calendar year that each held the trust interest.

(C) *Simplified Reporting for Certain NMWHFITs—(1) In general.* The trustee of an NMWHFIT described in paragraph (c)(2)(v)(C)(2) of this section is not required to report the information described in paragraph (c)(2)(v)(A) of this section (regarding redemptions) or (c)(2)(v)(B) of this section (regarding sales). However, the trustee must report to requesting persons, for each date on which the amount of redemption proceeds to be paid for the redemption of a trust interest is determined, information that will enable requesting persons to determine the redemption proceeds per trust interest on

that date. The trustee also must provide requesting persons with a statement that this paragraph applies to the NMWHFIT.

(2) *NMWHFITs that qualify for the exception.* This paragraph (c)(2)(v)(C) applies to a NMWHFIT if—

(i) Substantially all the assets of the NMWHFIT produce income that is treated as interest income (but only if these assets trade on a recognized exchange or securities market without a price component attributable to accrued interest) or produce dividend income (as defined in section 6042(b) and the regulations under that section). (Trust sales proceeds and gross proceeds from sales described in paragraphs (c)(2)(iv)(G) and (H) of this section are ignored for the purpose of determining if substantially all of a NMWHFIT's assets produce dividend or the interest income described in this paragraph); and

(ii) The qualified NMWHFIT exception of paragraph (c)(2)(iv)(E) of this section is satisfied, or the trustee is required by the governing document of the NMWHFIT to determine and distribute all cash held for distribution (as defined in paragraph (b)(5) of this section) no less frequently than monthly. A NMWHFIT will be considered to have satisfied this paragraph (c)(2)(v)(C)(2)(i) notwithstanding that the governing document of the NMWHFIT permits the trustee to forego making a required monthly or more frequent distribution, if the cash held for distribution is less than 0.1 percent of the aggregate net asset value of the trust as of the date specified in the governing document for calculating the amount of the monthly distribution.

(vi) *Information regarding bond premium.* The trustee generally must report information that enables a beneficial owner to determine, in any manner that is reasonably consistent with section 171, the amount of the beneficial owner's amortizable bond premium, if any, for each calendar year. However, if a NMWHFIT meets the general *de minimis* test in paragraph (c)(2)(iv)(D)(I) of this section, the qualified NMWHFIT exception of paragraph (c)(2)(iv)(E) of this section, or the NMWHFIT final calendar year ex-

ception of paragraph (c)(2)(iv)(F) of this section, the trustee of the NMWHFIT is not required to report information regarding bond premium.

(vii) *Information regarding market discount.* The trustee generally must report information that enables a beneficial owner to determine, in any manner reasonably consistent with section 1276 (including section 1276(a)(3)), the amount of market discount that has accrued during the calendar year. However, if a NMWHFIT meets the general *de minimis* test in paragraph (c)(2)(iv)(D) of this section, the qualified NMWHFIT exception of paragraph (c)(2)(iv)(E) of this section, or the NMWHFIT final calendar year exception of paragraph (c)(2)(iv)(F) of this section, the trustee of such NMWHFIT is not required to provide information regarding market discount.

(viii) *Other information.* The trustee must provide any other information necessary for a beneficial owner of a trust interest to report, with reasonable accuracy, the items (as defined in paragraph (b)(9) of this section) attributable to the portion of the trust treated as owned by the beneficial owner under section 671.

(3) *Identifying the representative who will provide trust information.* The trustee must identify a representative of the WHFIT who will provide the information specified in this paragraph (c). The trustee also may identify an Internet website at which the trustee will provide the information specified in this paragraph (c). This information must be—

(i) Printed in a publication generally read by, and available to, requesting persons;

(ii) Stated in the trust's prospectus; or

(iii) Posted at the trustee's Internet website.

(4) *Time and manner of providing information—(i) Time—(A) In general.* Except as provided in paragraph (c)(4)(i)(B) of this section, a trustee must provide the information specified in this paragraph (c) to requesting persons on or before the later of—

(1) The 30th day after the close of the calendar year to which the request relates; or

(2) The day that is 14 days after the receipt of the request.

(B) *Trusts holding interests in other WHFITs or in REMICs.* If the WHFIT holds an interest in one or more other WHFITs or holds one or more REMIC regular interests, or holds both, a trustee must provide the information specified in this paragraph (c) to requesting persons on or before the later of—

(1) The 44th day after the close of the calendar year to which the request relates; or

(2) The day that is 28 days after the receipt of the request.

(ii) *Manner.* The information specified in this paragraph (c) must be provided—

(A) By written statement sent by first class mail to the address provided by the requesting person;

(B) By causing it to be printed in a publication generally read by and available to requesting persons and by notifying requesting persons in writing of the publication in which it will appear, the date on which it will appear, and, if possible, the page on which it will appear;

(C) By causing it to be posted at an Internet website, provided the trustee identifies the website under paragraph (c)(3) of this section;

(D) By electronic mail provided that the requesting person requests that the trustee furnish the information by electronic mail and the person furnishes an electronic address; or

(E) By any other method agreed to by the trustee and the requesting person.

(iii) *Inclusion of information with respect to all calculation periods.* If a trustee calculates WHFIT information using a calculation period other than a calendar year, the trustee must provide information for each calculation period that falls within the calendar year requested.

(5) *Requesting information from a WHFIT—(i) In general.* Requesting persons may request the information specified in this paragraph (c) from a WHFIT.

(ii) *Manner of requesting information.* In requesting WHFIT information, a requesting person must specify the WHFIT and the calendar year for which information is requested.

(iii) *Period of time during which a requesting person may request WHFIT information.* For the life of the WHFIT and for five years following the date of the WHFIT's termination, a requesting person may request the information specified in this paragraph (c) for any calendar year of the WHFIT's existence beginning with the 2007 calendar year.

(6) *Trustee's requirement to retain records.* For the life of the WHFIT and for five years following the date of termination of the WHFIT, the trustee must maintain in its records a copy of the information required to be provided to requesting persons this paragraph (c) for each calendar year beginning with the 2007 calendar year. For a period of five years following the close of the calendar year to which the data pertains, the trustee also must maintain in its records such supplemental data as may be necessary to establish that the information provided to requesting persons is correct and meets the requirements of this paragraph (c).

(d) *Form 1099 requirement for trustees and middlemen—(1) Obligation to file Form 1099 with the IRS—(i) In general.* Except as provided in paragraphs (d)(1)(ii) and (iii) of this section—

(A) The trustee must file with the IRS the appropriate Forms 1099, reporting the information specified in paragraph (d)(2) of this section with respect to any TIH who holds an interest in the WHFIT directly and not through a middleman; and

(B) Every middleman must file with the IRS the appropriate Forms 1099, reporting the information specified in paragraph (d)(2) of this section with respect to any TIH on whose behalf or account the middleman holds an interest in the WHFIT or acts as an intermediary.

(ii) *Forms 1099 not required for exempt recipients—(A) In general.* A Form 1099 is not required with respect to a TIH who is an exempt recipient (as defined in paragraph (b)(7) of this section), unless the trustee or middleman backup withholds under section 3406 on payments made to an exempt recipient (because, for example, the exempt recipient has failed to furnish a Form W-9 on request). If the trustee or middleman backup withholds, then the trustee or middleman is required to file a

Form 1099 under this paragraph (d) unless the trustee or middleman refunds the amount withheld in accordance with § 31.6413(a)-3 of this chapter.

(B) *Exempt recipients must include WHFIT information in computing taxable income.* A beneficial owner who is an exempt recipient must obtain WHFIT information and must include the items (as defined in paragraph (b)(9) of this section) of the WHFIT in computing its taxable income on its federal income tax return. Paragraphs (c)(3) and (h) of this section provide rules for exempt recipients to obtain information from a WHFIT.

(iii) *Reporting and withholding with respect to foreign persons.* The items of the WHFIT attributable to a TIH who is not a United States person must be reported, and amounts must be withheld, as provided under subtitle A, chapter 3 of the Internal Revenue Code (sections 1441 through 1464) and the regulations thereunder and not reported under this paragraph (d).

(2) *Information to be reported*—(i) *Determining amounts to be provided on Forms 1099.* The amounts reported to the IRS for a calendar year by a trustee or middleman on the appropriate Form 1099 must be consistent with the information provided by the trustee under paragraph (c) of this section and must reflect with reasonable accuracy the amount of each item required to be reported on a Form 1099 that is attributable (or if permitted under paragraphs (d)(2)(ii)(D) and (E) of this section, distributed) to the TIH. If the trustee, in providing WHFIT information, uses the safe harbors in paragraph (f)(1) or (g)(1) of this section, then the trustee or middleman must calculate the information to be provided to the IRS on the Forms 1099 in accordance with paragraph (f)(2) or (g)(2) of this section, as appropriate.

(ii) *Information to be provided on Forms 1099.* The trustee or middleman must include on the appropriate Forms 1099:

(A) *Taxpayer information.* The name, address, and taxpayer identification number of the TIH;

(B) *Information regarding the person filing the Form 1099.* The name, address, taxpayer identification number, and

telephone number of the person required to file the Form 1099;

(C) *Gross income.* All items of gross income of the WHFIT attributable to the TIH for the calendar year (including OID (unless the exception for certain WHMTs applies (see paragraph (c)(2)(ii)(A) of this section)) and all amounts of income attributable to a selling, purchasing, or redeeming TIH for the portion of the calendar year that the TIH held its interest (unless paragraph (c)(2)(v)(C) of this section (regarding an exception for certain NMWHFITs) applies));

(D) *Non pro-rata partial principal payments.* All non pro-rata partial principal payments (as defined in paragraph (b)(13) of this section) received by the WHFIT that are attributable (or distributed, in the case of a trustee or middleman reporting under paragraph (f)(2)(iii) of this section) to the TIH;

(E) *Trust sales proceeds.* All trust sales proceeds (as defined in paragraph (b)(21) of this section) that are attributable to the TIH for the calendar year, if any, or, if paragraph (c)(2)(iv)(B) of this section (regarding certain NMWHFITs) applies, the amount of trust sales proceeds distributed to the TIH for the calendar year;

(F) *Reporting Redemptions.* All redemption asset proceeds (as defined in paragraph (b)(14) of this section) paid to the TIH for the calendar year, if any, or, if paragraph (c)(2)(v)(C) of this section (regarding an exception for certain NMWHFITs) applies, all redemption proceeds (as defined in paragraph (b)(15) of this section) paid to the TIH for the calendar year;

(G) *Reporting sales of a trust interest on a secondary market.* All sales asset proceeds (as defined in paragraph (b)(17) of this section) paid to the TIH for the sale of a trust interest or interests on a secondary market established for the NMWHFIT for the calendar year, if any, or, if paragraph (c)(2)(v)(C) of this section (regarding an exception for certain NMWHFITs) applies, all sales proceeds (as defined in paragraph (b)(18) of this section) paid to the TIH for the calendar year; and

(H) *Other information.* Any other information required by the Form 1099.

(3) *Time and manner of filing Forms 1099*—(i) *Time and place.* The Forms 1099

required to be filed under this paragraph (d) must be filed on or before February 28 (March 31, if filed electronically) of the year following the year for which the Forms 1099 are being filed. The returns must be filed with the appropriate Internal Revenue Service Center, at the address listed in the instructions for the Forms 1099. For extensions of time for filing returns under this section, see § 1.6081-1, the instructions for the Forms 1099, and applicable revenue procedures (see § 601.601(d)(2) of this chapter). For magnetic media filing requirements, see § 301.6011-2 of this chapter.

(ii) *Reporting trust sales proceeds, redemption asset proceeds, redemption proceeds, sale asset proceeds, sales proceeds and non pro-rata partial principal payments—(A) Form to be used.* Trust sales proceeds, redemption asset proceeds, redemption proceeds, sale asset proceeds, sales proceeds, and non pro-rata partial principal payments are to be reported on the same type of Form 1099 as that required for reporting gross proceeds under section 6045.

(B) *Appropriate reporting for in-kind redemptions.* The value of the assets distributed with respect to an in-kind redemption is not required to be reported to the IRS. Unless paragraph (c)(2)(v)(C) of this section applies, the trustee or middleman must report the gross income attributable to the redeemed trust interest for the calendar year up to the date of the redemption under paragraph (d)(2)(ii)(C) of this section.

(e) *Requirement to furnish a written tax information statement to the TIH—(1) In general.* Every trustee or middleman required to file appropriate Forms 1099 under paragraph (d) of this section with respect to a TIH must furnish to that TIH (the person whose identifying number is required to be shown on the form) a written tax information statement showing the information described in paragraph (e)(2) of this section. The amount of a trust item reported to a TIH under this paragraph (e) must be consistent with the information reported to the IRS with respect to the TIH under paragraph (d) of this section. Information provided in this written statement must be determined in accordance with the rules

provided in paragraph (d)(2)(i) of this section (regardless of whether the information was required to be provided on a Form 1099). Further, the trustee or middleman must separately state on the written tax information statement any items that, if taken into account separately by that TIH, would result in an income tax liability that is different from the income tax liability that would result if the items were not taken into account separately.

(2) *Information required.* For the calendar year, the written tax information statement must meet the following requirements:

(i) *WHFIT information.* The written tax information statement must include the name of the WHFIT and the identifying number of the WHFIT ;

(ii) *Identification of the person furnishing the statement.* The written tax information statement must include the name, address, and taxpayer identification number of the person required to furnish the statement;

(iii) *Items of income, expense, and credit.* The written tax information statement must include information regarding the items of income (that is, the information required to be reported to the IRS on Forms 1099), expense (including affected expenses), and credit that are attributable to the TIH for the calendar year;

(iv) *Non pro-rata partial principal payments.* The written tax information statement must include the information required to be reported to the IRS on Forms 1099 under paragraph (d)(2)(ii)(D) of this section (regarding the non pro-rata partial principal payments that are attributable (or distributed, in the case of a trustee or middleman reporting under paragraph (f)(2)(iii) of this section) to the TIH for the calendar year).

(v) *Asset sales and dispositions—(A) General rule.* Unless paragraph (c)(2)(iv)(B) (regarding the exception for certain NMWHFITs) or (c)(2)(iv)(C) (regarding the exception for certain WHMTs) of this section applies, the written tax information statement must include, with respect to each sale or disposition of a WHFIT asset for the calendar year—

(1) The date of sale or disposition;

(2) Information regarding the trust sales proceeds that are attributable to the TIH as a result of the sale or disposition; and

(3) Information that will enable the TIH to allocate with reasonable accuracy a portion of the TIH's basis in the TIH's trust interest to the sale or disposition.

(B) *Special rule for certain NMWHFITs and WHMTs.* In the case of a NMWHFIT to which paragraph (c)(2)(iv)(B) of this section applies or in the case of a WHMT to which paragraph (c)(2)(iv)(C) of this section applies, the written tax information statement must include, with respect to asset sales and dispositions, only the information required to be reported to the IRS on Form 1099 under paragraph (d)(2)(ii)(E) of this section.

(vi) *Redemption or sale of a trust interest.* The written tax information statement must include the information required to be reported to the IRS on Forms 1099 under paragraphs (d)(2)(ii)(F) and (G) of this section (regarding the sales and redemptions of trust interests made by the TIH for the calendar year);

(vii) *Information regarding market discount and bond premium.* The written tax information statement must include the information required to be reported by the trustee under paragraphs (c)(2)(vi) and (vii) of this section (regarding bond premium and market discount);

(viii) *Other information.* The written tax information statement must include any other information necessary for the TIH to report, with reasonable accuracy for the calendar year, the items (as defined in paragraph (b)(9) of this section) attributable to the portion of the trust treated as owned by the TIH under section 671. The written tax information statement may include information with respect to a trust item on a per trust interest basis if the trustee has reported (or calculated) the information with respect to that item on a per trust interest basis and information with respect to that item is not required to be reported on a Form 1099; and

(ix) *Required statement.* The written tax information statement must inform the TIH that the items of income,

deduction, and credit, and any other information shown on the statement must be taken into account in computing the taxable income and credits of the TIH on the Federal income tax return of the TIH. If the written tax information statement reports that an amount of qualified dividend income is attributable to the TIH, the written tax information statement also must inform the TIH that the TIH must meet the requirements of section 1(h)(11)(B)(iii) to treat the dividends as qualified dividends.

(3) *Due date and other requirements.* The written tax information statement must be furnished to the TIH on or before March 15 of the year following the calendar year for which the statement is being furnished.

(4) *Requirement to retain records.* For a period of no less than five years from the due date for furnishing the written tax information statement, a trustee or middleman must maintain in its records a copy of any written tax information statement furnished to a TIH, and such supplemental data as may be required to establish the correctness of the statement.

(f) *Safe harbor for providing information for certain NMWHFITs—(1) Safe harbor for trustee reporting of NMWHFIT information.* The trustee of a NMWHFIT that meets the requirements of paragraph (f)(1)(i) of this section is deemed to satisfy paragraph (c)(1)(i) of this section, if the trustee calculates and provides WHFIT information in the manner described in this paragraph (f) and provides a statement to a requesting person giving notice that information has been calculated in accordance with this paragraph (f)(1).

(i) *In general—(A) Eligibility to report under this safe harbor.* Only NMWHFITs that meet the requirements set forth in paragraphs (f)(1)(i)(A)(I) and (2) of this section may report under this safe harbor. For purposes of determining whether the requirements of paragraph (f)(1)(i)(A)(I) of this section are met, trust sales proceeds and gross proceeds from sales described in paragraphs (c)(2)(iv)(G) and (H) of this section are ignored.

(I) Substantially all of the NMWHFIT's income is from dividends or interest; and

(2) All trust interests have identical value and rights.

(B) *Consistency requirements.* The trustee must—

(1) Calculate all trust items subject to the safe harbor consistent with the safe harbor; and, (2) Report under this paragraph (f)(1) for the life of the NMWHFIT; or, if the NMWHFIT has a start-up date before January 1, 2007, the NMWHFIT must begin reporting under this paragraph (f)(1) as of January 1, 2007 and must continue to report under this paragraph for the life of the NMWHFIT.

(ii) *Reporting NMWHFIT income and expenses.* A trustee must first determine the total amount of NMWHFIT distributions (both actual and deemed) for the calendar year and then express each income or expense item as a fraction of the total amount of NMWHFIT distributions. These fractions (hereinafter referred to as factors) must be accurate to at least four decimal places.

(A) *Step One: Determine the total amount of NMWHFIT distributions for the calendar year.* The trustee must determine the total amount of NMWHFIT distributions (actual and deemed) for the calendar year. If the calculation of the total amount of NMWHFIT distributions under this paragraph (f)(1)(ii)(A) results in a zero or a negative number, the trustee may not determine income and expense information under this paragraph (f)(1)(ii)(A) (but may report all other applicable items under this paragraph (f)(1)). The total amount of NMWHFIT distributions equals the amount of NMWHFIT funds paid out to all TIHs (including all trust sales proceeds, all principal receipts, and all redemption proceeds) for the calendar year—

(1) Increased by—

(i) All amounts that would have been distributed during the calendar year, but were instead reinvested pursuant to a reinvestment plan; and

(ii) All cash held for distribution to TIHs as of December 31 of the year for which the trustee is reporting; and

(2) Decreased by—

(i) All cash distributed during the current year that was included in a year-end cash allocation factor (see paragraph (f)(1)(ii)(C)(I) of this section) for a prior year;

(ii) All redemption asset proceeds paid for the calendar year, or if paragraph (c)(2)(v)(C) of this section applies to the NMWHFIT, all redemption proceeds paid for the calendar year;

(iii) All trust sales proceeds distributed during the calendar year; and

(iv) All non pro-rata partial principal payments distributed during the calendar year.

(3) For the purpose of determining the amount of all redemption asset proceeds or redemption proceeds paid for the calendar year with respect to paragraph (f)(1)(ii)(A)(2)(ii) of this section, the value of the assets (not including cash) distributed with respect to an in-kind redemption is disregarded. Any cash distributed as part of the redemption must be included in the total amount of NMWHFIT distributions.

(B) *Step Two: Determine factors that express the ratios of NMWHFIT income and expenses to the total amount of NMWHFIT distributions.* The trustee must determine factors that express the ratios of NMWHFIT income and expenses to the total amount of NMWHFIT distributions as follows:

(1) *Income factors.* For each item of income generated by the NMWHFIT's assets for the calendar year, the trustee must determine the ratio of the gross amount of that item of income to the total amount of NMWHFIT distributions for the calendar year; and

(2) *Expense factors.* For each item of expense paid by a NMWHFIT during the calendar year, the trustee must determine the ratio of the gross amount of that item of expense to the total amount of NMWHFIT distributions for the calendar year.

(C) *Step Three: Determine adjustments for reconciling the total amount of NMWHFIT distributions (determined under Step One) with amounts actually paid to TIHs.* Paragraph (f)(1)(ii)(B) of this section (Step Two) requires an item of income or expense to be expressed as a ratio of that item to the total amount of NMWHFIT distributions as determined in paragraph (f)(1)(ii)(A) of this section (Step One). A TIH's share of the total amount of NMWHFIT distributions may differ from the amount actually paid to that TIH. A trustee, therefore, must provide

information that can be used to compute a TIH's share of the total amount of NMWHFIT distributions based on the amount actually paid to the TIH. A trustee satisfies this requirement by providing a current year-end cash allocation factor, a prior year cash allocation factor, and the date on which the prior year cash was distributed to TIHs (prior year cash distribution date).

(1) *The current year-end cash allocation factor.* The current year-end cash allocation factor is the amount of cash held for distribution to TIHs by the NMWHFIT as of December 31 of the calendar year for which the trustee is reporting, divided by the number of trust interests outstanding as of that date.

(2) *The prior year cash allocation factor.* The prior year cash allocation factor is the amount of the distribution during the calendar year for which the trustee is reporting that was included in determining a year-end cash allocation factor for a prior year, divided by the number of trust interests outstanding on the date of the distribution.

(iii) *Reporting non pro-rata partial principal payments under the safe harbor.* The trustee must provide a list of dates on which non pro-rata partial principal payments were distributed by the trust, and the amount distributed, per trust interest.

(iv) *Reporting sales and dispositions of NMWHFIT assets under the safe harbor—*

(A) *NMWHFITs that must report under the general rule—(1) In general.* If a NMWHFIT must report under the general rule of paragraph (c)(2)(iv)(A) of this section, the trustee must provide a list of dates (from earliest to latest) on which sales or dispositions of NMWHFIT assets occurred during the calendar year for which the trustee is reporting and, for each date identified, provide—

(i) The trust sales proceeds received by the trust, per trust interest, with respect to the sales and dispositions, on that date;

(ii) The trust sales proceeds distributed to TIHs, per trust interest, with respect to the sales and dispositions on that date, and the date that the trust sales proceeds were distributed to the TIHs; and

(iii) The ratio (expressed as a percentage) of the assets sold or disposed of on that date to all assets held by the NMWHFIT.

(2) *Determination of the portion of all assets held by the NMWHFIT that the assets sold or disposed of represented—*

(i) If a NMWHFIT terminates within twenty-four months of its start-up date, the ratio of the assets sold or disposed of on that date to all assets held by the NMWHFIT is based on the fair market value of the NMWHFIT's assets as of the start-up date; or

(ii) If a NMWHFIT terminates more than twenty-four months after its start-up date, the ratio of the assets sold or disposed of on that date to all assets held by the NMWHFIT is based on the fair market value of the NMWHFIT's assets as of the date of the sale or disposition.

(B) *NMWHFITs excepted from the general rule.* If paragraph (c)(2)(iv)(B) of this section applies to the NMWHFIT, the trustee must provide a list of dates on which trust sales proceeds were distributed, and the amount of trust sales proceeds, per trust interest, that were distributed on that date. The trustee also must also provide requesting persons with the statement required by paragraph (c)(2)(iv)(B) of this section.

(v) *Reporting redemptions under the safe harbor—(A) In general.* The trustee must:

(1) Provide a list of dates on which the amount of redemption proceeds paid for the redemption of a trust interest was determined and the amount of the redemption asset proceeds determined per trust interest on that date, or if paragraph (c)(2)(v)(C) of this section applies to the NMWHFIT, the amount of redemption proceeds determined on that date; or

(2) Provide to each requesting person that held (either for its own behalf or for the behalf of a TIH) a trust interest that was redeemed during the calendar year, the date of the redemption and the amount of the redemption asset proceeds per trust interest determined on that date, or if paragraph (c)(2)(v)(C) of this section applies to the NMWHFIT, the amount of the redemption proceeds determined for that date; and

(B) *Paragraph (c)(2)(v)(C) statement.* If paragraph (c)(2)(v)(C) of this section applies to the NMWHFIT, the trustee must provide a statement to requesting persons to the effect that the trustee is providing information consistent with paragraph (c)(2)(v)(C) of this section.

(vi) *Reporting the sale of a trust interest under the safe harbor.* If paragraph (c)(2)(v)(C) of this section does not apply to the NMWHFIT, the trustee must provide, for each day of the calendar year, the amount of cash held for distribution, per trust interest, by the NMWHFIT on that date. If the trustee is able to identify the date on which trust interests were sold on the secondary market, the trustee alternatively may provide information for each day on which sales of trust interests occurred rather than for each day during the calendar year. If paragraph (c)(2)(v)(C) of this section applies to the NMWHFIT, the trustee is not required to provide any information under this paragraph (f)(1)(vi), other than a statement that the NMWHFIT meets the requirements to report under paragraph (c)(2)(v)(C) of this section.

(vii) *Reporting OID information under the safe harbor.* The trustee must provide, for each calculation period, the average aggregate daily accrual of OID per \$1,000 of original principal amount.

(viii) *Reporting market discount information under the safe harbor—(A) In general—(1) Trustee required to provide market discount information.* If the trustee is required to provide information regarding market discount under paragraph (c)(2)(vii) of this section, the trustee must provide—

(i) The information required to be provided under paragraph (f)(1)(iv)(A)(I)(iii) of this section; and

(ii) If the NMWHFIT holds debt instruments with OID, a list of the aggregate adjusted issue prices of the debt instruments per trust interest calculated as of the start-up date or measuring date (see paragraph (c)(2)(iv)(D)(4) of this section) (whichever provides more accurate information) and as of January 1 for each subsequent year of the NMWHFIT.

(2) *Trustee not required to provide market discount information.* If the trustee is not required to provide market discount information under paragraph

(c)(2)(vii) of this section (because the NMWHFIT meets the general de minimis test of paragraph (c)(2)(iv)(D)(I) of this section, the qualified NMWHFIT exception of paragraph (c)(2)(iv)(E) of this section, or the NMWHFIT final year exception of paragraph (c)(2)(iv)(F) of this section), the trustee is not required under this paragraph (f) to provide any information regarding market discount.

(B) *Reporting market discount information under the safe harbor when the yield of the debt obligations held by the WHFIT is expected to be affected by prepayments.*

[Reserved]

(ix) *Reporting bond premium information under the safe harbor.* [Reserved]

(x) *Reporting additional information.* If a requesting person cannot use the information provided by the trustee under paragraphs (f)(1)(ii) through (ix) of this section to determine with reasonable accuracy the trust items that are attributable to a TIH, the requesting person must request, and the trustee must provide, additional information to enable the requesting person to determine the trust items that are attributable to the TIH. See, for example, paragraph (f)(2)(ii)(A)(4) of this section which requires a middleman to request additional information from the trustee when the total amount of WHFIT distributions attributable to a TIH equals zero or less.

(2) *Use of information provided by trustees under the safe harbor for NMWHFITs—(i) In general.* If a trustee reports NMWHFIT items in accordance with paragraph (f)(1) of this section, the information provided with respect to those items on the Forms 1099 required under paragraph (d) of this section to be filed with the IRS and on the statement required under paragraph (e) of this section to be furnished to the TIH must be determined as provided in this paragraph (f)(2).

(ii) *Determining NMWHFIT income and expense under the safe harbor.* The trustee or middleman must determine the amount of each item of income and expense attributable to a TIH as follows—

(A) *Step One: Determine the total amount of NMWHFIT distributions attributable to the TIH.* To determine the

total amount of NMWHFIT distributions attributable to a TIH for the calendar year, the total amount paid to, or credited to the account of, the TIH during the calendar year (including amounts paid as trust sales proceeds or partial non-pro rata principal payments, redemption proceeds, and sales proceeds) is—

(1) Increased by—

(i) All amounts that would have been distributed during the calendar year to the TIH, but that were reinvested pursuant to a reinvestment plan (unless another person (for example, the custodian of the reinvestment plan) is responsible for reporting these amounts under paragraph (d) of this section); and

(ii) An amount equal to the current year-end cash allocation factor (provided by the trustee in accordance with paragraph (f)(1)(ii)(C)(1) of this section) multiplied by the number of trust interests held by the TIH as of December 31 of the calendar year for which the trustee is reporting; and

(2) Decreased by—

(i) An amount equal to the prior year cash allocation factor (provided by the trustee in accordance with paragraph (f)(1)(ii)(C)(2) of this section) multiplied by the number of trust interests held by the TIH on the date of the distribution;

(ii) An amount equal to all redemption asset proceeds paid to the TIH for the calendar year, or if paragraph (c)(2)(v)(C) of this section applies to the NMWHFIT, an amount equal to all redemption proceeds paid to the TIH for the calendar year;

(iii) An amount equal to all sale asset proceeds paid to the TIH for the calendar year, or if paragraph (c)(2)(v)(C) of this section applies to the NMWHFIT, the amount of sales proceeds paid to the TIH for the calendar year;

(iv) In the case of a TIH that purchased a trust interest in a NMWHFIT to which paragraph (c)(2)(v)(C) of this section does not apply, an amount equal to the cash held for distribution per trust interest on the date that the TIH acquired its interest, multiplied by the trust interests acquired on that date;

(v) The amount of the trust sales proceeds distributed to the TIH, calculated as provided in paragraph (f)(2)(iv)(A)(3) of this section; and

(vi) The amount of non pro-rata partial principal prepayments distributed to the TIH during the calendar year, calculated as provided in paragraph (f)(2)(iii) of this section.

(3) *Treatment of in-kind distributions under this paragraph (f)(2)(i).* The value of the assets (not including cash) received with respect to an in-kind redemption is not included in the amount used in paragraph (f)(2)(ii)(A)(2)(ii) of this section. The cash distributed as part of the redemption, however, must be included in the total amount of NMWHFIT distributions paid to the TIH.

(4) *The total amount of distributions attributable to a TIH calculated under this paragraph (f)(2)(i)(A) equals zero or less.* If the total amount of distributions attributable to a TIH, calculated under this paragraph (f)(2)(i)(A), equals zero or less, the trustee or middleman may not report the income and expense attributable to the TIH under this paragraph (f)(2)(i). The trustee or middleman must request additional information from the trustee of the NMWHFIT to enable the trustee or middleman to determine with reasonable accuracy the items of income and expense that are attributable to the TIH. The trustee or middleman must report the other items subject to paragraph (f)(1) of this section in accordance with this paragraph (f)(2).

(B) *Step Two: Apply the factors provided by the trustee to determine the items of income and expense that are attributable to the TIH.* The amount of each item of income (other than OID) and each item of expense attributable to a TIH is determined as follows—

(1) *Application of income factors.* For each income factor, the trustee or middleman must multiply the income factor by the total amount of NMWHFIT distributions attributable to the TIH for the calendar year (as determined in paragraph (f)(2)(i)(A) of this section).

(2) *Application of expense factors.* For each expense factor, the trustee or middleman must multiply the expense factor by the total amount of NMWHFIT distributions attributable

to the TIH for the calendar year (as determined in paragraph (f)(2)(i)(A) of this section).

(iii) *Reporting non pro-rata partial principal payments under the safe harbor.* To determine the amount of non pro-rata partial principal payments that are distributed to a TIH for the calendar year, the trustee or middleman must aggregate the amount of non pro-rata partial principal payments distributed to a TIH for each day that non pro-rata principal payments were distributed. To determine the amount of non pro-rata principal payments that are distributed to a TIH on each distribution date, the trustee or middleman must multiply the amount of non pro-rata principal payments per trust interest distributed on that date by the number of trust interests held by the TIH.

(iv) *Reporting sales and dispositions of NMWHFIT assets under the safe harbor—*
(A) *Reporting under the safe harbor if the general rules apply to the NMWHFIT.* Unless paragraph (c)(2)(iv)(B) of this section applies, the trustee or middleman must comply with paragraphs (f)(2)(iv)(A)(1), (2), and (3) of this section.

(1) *Form 1099.* The trustee or middleman must report the amount of trust sales proceeds attributable to the TIH for the calendar year on Form 1099. To determine the amount of trust sales proceeds attributable to a TIH for the calendar year, the trustee or middleman must aggregate the total amount of trust sales proceeds attributable to the TIH for each date on which the NMWHFIT sold or disposed of an asset or assets. To determine the total amount of trust sales proceeds attributable to a TIH for each date that the NMWHFIT sold or disposed of an asset or assets, the trustee or middleman multiplies the amount of trust sales proceeds received by the NMWHFIT per trust interest on that date by the number of trust interests held by the TIH on that date.

(2) *The written tax information statement furnished to the TIH.* The written tax information statement required to be furnished to the TIH under paragraph (e) of this section must include a list of dates (in order, from earliest to latest) on which sales or dispositions of

trust assets occurred during the calendar year and provide, for each date identified—

(i) The trust sales proceeds received by the trust, per trust interest, with respect to the sales or dispositions of trust assets on that date; and

(ii) The information provided by the trustee under paragraph (f)(1)(iv)(B)(2) of this section regarding the ratio of the assets sold or disposed of on that date to all the assets of the NMWHFIT held on that date, prior to such sale or disposition.

(3) *Calculating the total amount of trust sales proceeds distributed to the TIH.* To determine the total amount of NMWHFIT distributions attributable to a TIH, the trustee or middleman must calculate the amount of trust sales proceeds distributed to the TIH for the calendar year. (See paragraph (f)(2)(ii)(A)(2)(v) of this section.) To determine the amount of trust sales proceeds distributed to a TIH for the calendar year, the trustee or middleman must aggregate the total amount of trust sales proceeds distributed to the TIH for each date on which the NMWHFIT distributed trust sales proceeds. To determine the total amount of trust sales proceeds distributed to a TIH for each date that the NMWHFIT distributed trust sales proceeds, the trustee or middleman must multiply the amount of trust sales proceeds distributed by the NMWHFIT per trust interest on that date by the number of trust interests held by the TIH on that date.

(B) *Reporting under the safe harbor if paragraph (c)(2)(iv)(B) of this section applies to the NMWHFIT.* If paragraph (c)(2)(iv)(B) of this section applies, the trustee or middleman must calculate, in the manner provided in paragraph (f)(2)(iv)(A)(3) of this section, the amount of trust sales proceeds distributed to the TIH for the calendar year. The trustee or middleman must report this amount on the Form 1099 filed for the TIH and on the written tax information statement furnished to the TIH.

(v) *Reporting redemptions under the safe harbor—*(A) Except as provided in paragraph (f)(2)(v)(B) or (C) of this section, if the trustee has provided a list of dates for which the amount of the

redemption proceeds to be paid for the redemption of a trust interest was determined and the redemption asset proceeds paid for that date, the trustee or middleman must multiply the redemption asset proceeds determined per trust interest for that date by the number of trust interests redeemed by the TIH on that date.

(B) If paragraph (c)(2)(v)(C) of this section applies, and the trustee has provided a list of dates for which the amount of the redemption proceeds to be paid for the redemption of a trust interest was determined and the redemption proceeds determined per trust interest on each date, the trustee or middleman must multiply the redemption proceeds per trust interest for each date by the number of trust interests redeemed by the TIH on that date.

(C) If the trustee has provided the requesting person with information regarding the redemption asset proceeds paid for each redemption of a trust interest held by the middleman for the calendar year, or if paragraph (c)(2)(v)(C) of this section applies and the trustee has provided the amount of redemption proceeds paid for each redemption of a trust interest held by the middleman during the calendar year, the requesting person may use this information to determine the amount of the redemption asset proceeds or redemption proceeds paid to the TIH for the calendar year.

(vi) *Reporting sales of trust interests under the safe harbor*—(A) Except as provided in paragraph (f)(2)(vi)(B) of this section, the trustee or middleman must subtract the amount of cash held for distribution per trust interest on the date of the sale from the sales proceeds paid to the TIH to determine the sale asset proceeds that are to be reported to the TIH for each sale of a trust interest.

(B) If paragraph (c)(2)(v)(C) of this section applies, the trustee or middleman must report the sales proceeds paid to the TIH as a result of each sale of a trust interest.

(vii) *Reporting OID information under the safe harbor*—The trustee or middleman must aggregate the amounts of OID that are allocable to each trust interest held by a TIH for each calculation

period. The amount of OID that is allocable to a trust interest, with respect to each calculation period, is determined by multiplying—

(A) The product of the OID factor and the original principal balance of the trust interest, divided by 1,000; by

(B) The number of days during the OID calculation period in that calendar year that the TIH held the trust interest.

(viii) *Reporting market discount information under the safe harbor*—(A) Except as provided in paragraph (f)(2)(viii)(B) of this section, the trustee or middleman must provide the TIH with the information provided under paragraph (f)(1)(viii) of this section.

(B) If paragraph (c)(2)(iv)(B) of this section applies, the trustee and middleman are not required under this paragraph (f)(2) to provide any information regarding market discount.

(ix) *Reporting bond premium information under the safe harbor*. [Reserved]

(3) *Example of the use of the safe harbor for NMWHFITs*. The following example illustrates the use of the factors in this paragraph (f) to calculate and provide NMWHFIT information:

Example: (i) Facts—(A) *In general*—(1) Trust is a NMWHFIT that holds common stock in ten different corporations and has 100 trust interests outstanding. The start-up date for Trust is December 15, 2006, and Trust's registration statement under the Securities Act of 1933 became effective after July 31, 2006. Trust terminates on March 15, 2008. The agreement governing Trust requires Trust to distribute cash held by Trust reduced by accrued but unpaid expenses on April 15, July 15, and October 15 of the 2007 calendar year. The agreement also provides that the trust interests will be redeemed by the Trust for an amount equal to the value of the trust interest, as of the close of business, on the day the trust interest is tendered for redemption. There is no reinvestment plan. A secondary market for interests in Trust will be created by Trust's sponsor and Trust's sponsor will provide Trustee with a list of dates on which sales occurred on this secondary market.

(2) As of December 31, 2006, Trust holds \$12x for distribution to TIHs on the next distribution date and has no accrued but unpaid expenses. Trustee includes the \$12x in determining the year-end cash allocation factor for December 31, 2006.

(B) *Events occurring during the 2007 calendar year*—(1) As of January 1, 2007, Broker1 holds ten trust interests in Trust in street name for each of J and A and Broker2 holds ten

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trust interests in Trust in street name for *S*. *J*, *A*, and *S*; are individual, cash method taxpayers.

(2) As of January 1, 2007, the fair market value of the Trust's assets equals \$10,000x.

(3) During 2007, Trust receives \$588x in dividend income. Trustee determines that \$400x of the dividend income received during 2007 meets the definition of a qualified dividend in section 1(h)(11)(B)(i) and the holding period requirement in section 1(h)(11)(B)(iii) with respect to the Trust. During 2007, Trust also receives \$12x in interest income from investment of Trust's funds pending distribution to TIHs, and pays \$45x in expenses, all of which are affected expenses.

(4) On April 15, 2007, Trustee distributes \$135x, which includes the \$12x included in determining the year-end cash allocation factor for December 31, 2006. As a result of the distribution, Broker1 credits *J*'s account and *A*'s account for \$13.50x each. Broker2 credits *S*'s account for \$13.50x.

(5) On June 1, 2007, Trustee sells shares of stock for \$1000x to preserve the soundness of the trust. The stock sold on June 1, 2007, equaled 20% of the aggregate fair market value of the assets held by Trust on the start-up date of Trust. Trustee has chosen not to report sales described in paragraph (c)(2)(iv)(4)(ii) of Trust's assets under paragraph (c)(2)(iv)(D)(4) of this section.

(6) On July 15, 2007, Trustee distributes \$1,135x, which includes the \$1,000x of trust sales proceeds received by Trust for the sale of assets on June 1, 2007. As a result of the distribution, Broker1 credits *J*'s account and *A*'s account for \$113.50x each. Broker 2 credits *S*'s account for \$113.50x.

(7) On September 30 2007, *J*, through Trust's sponsor, sells a trust interest to *S* for \$115.35x. Trustee determines that the cash held for distribution per trust interest on September 30 is \$1.35x. As a result of the sale, Broker1 credits *J*'s account for \$115.35x.

(8) On October 15, 2007, Trustee distributes \$123x. As a result of the distribution, Broker1

credits *J*'s account for \$11.07x and *A*'s account for \$12.30x. Broker2 credits *S*'s account for \$13.53x.

(9) On December 10, 2007, *J* tenders a trust interest to Trustee for redemption through Broker1. Trustee determines that the amount of the redemption proceeds to be paid for a trust interest that is tendered for redemption on December 10, 2007 is \$116x, of which \$115x represents the redemption asset proceeds. Trustee pays this amount to Broker1 on *J*'s behalf. On December 12, 2007, trustee engages in a non pro-rata sale of shares of common stock for \$115x to effect *J*'s redemption of a trust interest. The stock sold on December 12, 2007, equals 2% of the aggregate fair market value of all the assets of Trust as of the start-up date.

(10) On December 10, 2007, *J*, through Trust's sponsor, also sells a trust interest to *S* for \$116x. Trustee determines that the cash held for distribution per trust interest on that date is \$1x. As a result of the sale, Broker1 credits *J*'s account for \$116x.

(11) As of December 31, 2007, Trust holds cash of \$173x and has incurred \$15x in expenses that Trust has not paid. *J* is the only TIH to redeem a trust interest during the calendar year. The sale of two trust interests in Trust by *J* to *S* are the only sales that occurred on the secondary market established by Trust's sponsor during 2007.

(ii) *Trustee reporting*—(A) *Summary of information provided by Trustee*. Trustee meets the requirements of paragraph (f)(1) of this section if Trustee provides the following information to requesting persons:

(1) *Income and expense information:*

| | |
|---|----------|
| Factor for ordinary dividend income | 0.3481 |
| Factor for qualified dividend income | 0.7407 |
| Factor for interest income | 0.0222 |
| Factor for affected expenses | 0.0833 |
| Current year-end cash allocation factor | 1.5960 |
| Prior year cash allocation factor | 0.1200 |
| Prior year cash distribution date | April 15 |

(2) *Information regarding asset sales and distributions:*

| Date of sale | Trust sales proceeds received | Trust sales proceeds distributed and date distributed | Percent of trust sold |
|-------------------|-------------------------------|---|-----------------------|
| June 1 | \$10.0000x | \$10.0000x (July 15) | 20 |
| December 12 | 1.1616x | 0.0000x | 2 |

(3) *Information regarding redemptions:*

| Date | Redemption asset proceeds |
|-------------------|---------------------------|
| December 10 | \$115x |

(4) *Information regarding sales of trust interests*

| Date | Cash held for distribution per trust interest |
|--------------------|---|
| September 30 | \$1.35x |
| December 10 | 1.00x |

(B) *Trustee determines this information as follows:*

(1) *Step One: Trustee determines the total amount of NMWHFIT distributions for the calendar year. The total amount of NMWHFIT*

distributions (actual and deemed) for the calendar year for purposes of determining the safe harbor factors is \$540x. This amount consists of the amounts paid on each scheduled distribution date during the calendar year (\$1135x, \$135x, and \$123x), plus the total amount paid to J as a result of J's redemption of a trust interest (\$116x) (\$1,135x + \$135x + \$123x + \$116x = \$1,509x)—

(i) Increased by all cash held for distribution to TIHs as of December 31, 2007 (\$158x), which is the cash held as of December 31, 2007 (\$173x) reduced by the accrued but unpaid expenses as of December 31, 2007 (\$15x), and

(ii) Decreased by all amounts distributed during the calendar year but included in the year-end cash allocation factor from a prior year (\$12x); all redemption asset proceeds paid for the calendar year (\$115x); and all trust sales proceeds distributed during the calendar year (\$1,000x).

(2) *Step Two: Trustee determines factors that express the ratio of NMWHFIT income (other than OID) and expenses to the total amount of NMWHFIT distributions.* Trustee determines the factors for each item of income earned by Trust and each item of expense as follows:

(i) *Ordinary dividend income factor.* The ordinary dividend income factor is 0.3481, which represents the ratio of the gross amount of ordinary dividends (\$188x) to the total amount of NMWHFIT distributions for the calendar year (\$540x).

(ii) *Qualified dividend income factor.* The qualified dividend income factor is 0.7407 which represents the ratio of the gross amount of qualified dividend income (\$400x) to the total amount of NMWHFIT distributions for the calendar year (\$540x).

(iii) *Interest income factor.* The interest income factor is 0.0222, which represents the ratio of the gross amount of interest income (\$12x) to the total amount of NMWHFIT distributions for the calendar year (\$540x).

(iv) *Expense factor.* The affected expenses factor is 0.0833, which represents the ratio of the gross amount of affected expenses paid by Trust for the calendar year (\$45x) to the total amount of NMWHFIT distributions for the calendar year (\$540x).

(3) *Step Three: Trustee determines adjustments for reconciling the total amount of NMWHFIT distributions with amounts paid to TIHs.* To enable requesting persons to determine the total amount of NMWHFIT distributions that are attributable to a TIH based on amounts actually paid to the TIH, the trustee must provide both a current year-end cash allocation factor and a prior year cash allocation factor.

(i) *Current year-end cash allocation factor.* The adjustment factor for cash held by Trust at year end is 1.5960, which represents the cash held for distribution as of December 31, 2007 (\$158x) (the amount of cash held by Trust on December 31, 2007 (\$173x) reduced by accrued, but unpaid, expenses (\$15x)), divided

by the number of trust interests outstanding at year-end (99).

(ii) *Prior Year Cash Allocation Factor.* The adjustment factor for distributions of year-end cash from the prior year is 0.1200, which represents the amount of the distribution during the current calendar year that was included in a year-end cash allocation factor for a prior year (\$12x), divided by the number of trust interests outstanding at the time of the distribution (100). The prior year cash distribution date is April 15, 2007.

(4) *Reporting sales and dispositions of trust assets—(i) Application of the de minimis test.* The aggregate fair market value of the assets of Trust as of January 1, 2007, was \$10,000x. During the 2007 calendar year, Trust received trust sales proceeds of \$1115x. The trust sales proceeds received by Trust for the 2007 calendar year equal 11.15% of Trust's fair market value as of January 1, 2007. Accordingly, the *de minimis* test is not satisfied for the 2007 calendar year. The qualified NMWHFIT exception in paragraph (c)(2)(iv)(E) of this section and the NMWHFIT final calendar year exception in (c)(2)(iv)(F) of this section also do not apply to Trust for the 2007 calendar year.

(ii) *Information to be provided.* To satisfy the requirements of paragraph (f)(1) of this section with respect to sales and dispositions of Trust's assets, Trustee provides a list of dates on which trust assets were sold during the calendar year, and provides, for each date: the trust sales proceeds (per trust interest) received on that date; the trust sales proceeds distributed to TIHs (per trust interest) with respect to sales or dispositions on that date; the date those trust sales proceeds were distributed, and the ratio of the assets sold or disposed of on that day to all the assets held by Trust. Because Trust will terminate within 15 months of its start-up date, Trustee must use the fair market value of the assets as of the start-up date to determine the portion of Trust sold or disposed of on any particular date.

(5) *Reporting redemptions.* Because Trust is not required to make distributions at least as frequently as monthly, and Trust does not satisfy the qualified NMWHFIT exception in paragraph (c)(2)(iv)(E) of this section, the exception in paragraph (c)(2)(v)(C) does not apply to Trust. To satisfy the requirements of paragraph (f)(1) of this section, Trustee provides a list of dates for which the redemption proceeds to be paid for the redemption of a trust interest was determined for the 2007 calendar year and the redemptions asset proceeds paid for each date. During 2007, Trustee only determined the amount of redemption proceeds paid for the redemption of a trust interest once, for December 10, 2007 and the redemption asset proceeds determined for that date was \$115x.

(6) *Reporting sales of trust interests.* Because trust is not required to make distributions

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at least as frequently as monthly, and Trust does not satisfy the qualified NMWHFIT exception in paragraph (c)(2)(iv)(E) of this section, the exception in paragraph (c)(2)(v)(C) of this section does not apply to Trust. Sponsor, in accordance with the trust agreement, provides Trustee with a list of dates on which sales on the secondary market occurred. To satisfy the requirements of paragraph (f)(1) of this section, Trustee provides requesting persons with a list of dates on which sales on the secondary market occurred and the amount of cash held for dis-

tribution, per trust interest, on each date. The first sale during the 2007 calendar year occurred on September 30, 2007, and the amount of cash held for distribution, per trust interest, on that date is \$1.35x. The second sale occurred on December 10, 2007, and the amount of cash held for distribution, per trust interest, on that date is \$1.00x.

(iii) *Brokers' use of information provided by Trustee.* (A) Broker1 and Broker2 use the information furnished by Trustee under the safe harbor to determine that the following items are attributable to J, A, and S—

| | | |
|--|-------|----------|
| With respect to J | | |
| Ordinary Dividend Income | ..... | \$17.89x |
| Qualified Dividend Income | ..... | 38.07x |
| Interest Income | ..... | 1.14x |
| Affected Expenses | ..... | 4.28x |
| Trust sales proceeds reported on Form 1099 | ..... | 108.13x |
| Redemption asset proceeds | | |
| For redemption on December 10 | ..... | 115.00x |
| Sale asset proceeds | | |
| For sale on September 30 | ..... | 114.00x |
| For sale on December 10 | ..... | 115.00x |
| With respect to A | | |
| Ordinary Dividend Income | ..... | 18.82x |
| Qualified Dividend Income | ..... | 40.04x |
| Interest Income | ..... | 1.20x |
| Affected Expenses | ..... | 4.50x |
| Trust sales proceeds reported on Form 1099 | ..... | 11.62x |
| With respect to S | | |
| Ordinary Dividend Income | ..... | 19.54x |
| Qualified Dividend Income | ..... | 41.58x |
| Interest Income | ..... | 1.25x |
| Affected Expenses | ..... | 4.68x |
| Trust sales proceeds reported on Form 1099 | ..... | 113.94x |

With respect to J, A, and S (regarding the sales and dispositions executed by Trust during the calendar year)

| Date | Trust sales proceeds received per trust interest | Percent of trust sold |
|-------------------|--|-----------------------|
| June 15 | \$10.0000x | 20 |
| December 12 | 1.1616x | 2 |

(B) The brokers determine the information provided to J, A, and S as follows—

(i) *Step One: Brokers determine the total amount of NMWHFIT distributions attributable to J, A, and S.* Broker1 determines that the total amount of NMWHFIT distributions attributable to J is \$51.39x and the total amount of NMWHFIT distributions attributable to A is \$54.06x. Broker2 determines that the total amount of NMWHFIT distributions attributable to S is \$56.13x.

(i) To calculate these amounts the brokers begin by determining the total amount paid to J, A, and S for the calendar year—

(A) The total amount paid to J for the calendar year equals \$485.42x and includes the April 15, 2007, distribution of \$13.50x, the July 15, 2007, distribution of \$113.50x, the sales proceeds for the September 30, 2007, sale of \$115.35x, the October 15, 2007, distribution of

\$11.07x, and the redemption proceeds of \$116x and sales proceeds of \$116x for the redemption and sale on December 10, 2007.

(B) The total amount paid to A for the calendar year equals \$139.30x and includes the April 15, 2007, distribution of \$13.50x, the July 15, 2007, distribution of \$113.50x and the October 15, 2007, distribution of \$12.30x.

(C) The total amount paid to S for the calendar year equals \$140.53x and includes the April 15, 2007, distribution of \$13.50x, the July 15, 2007, distribution of \$113.50x and the October 15, 2007, distribution of \$13.53x.

(ii) The brokers increase the total amount paid to J, A, and S by an amount equal to the current year-end cash allocation factor (1.5960) multiplied by the number of trust interests held by J (7), A (10), and S (12) as of December 31, 2007; that is for J, \$11.17x; for A, \$15.96x; and for S, \$19.15x.

(iii) The brokers reduce the amount paid to J, A, and S as follows—

(A) An amount equal to the prior year cash allocation factor (0.1200), multiplied by the number of trust interests held by J (10), A (10), and S (10) on the date of the prior year cash distribution; that is for J, A, and S, \$1.20x, each;

(B) An amount equal to all redemption asset proceeds paid to a TIH for the calendar year; that is, for *J*, \$115x;

(C) An amount equal to all sales asset proceeds attributable to the TIH for the calendar year; that is for *J*, \$229x (for the September 30, 2007, sale: \$115.35x—1.35x (cash held for distribution per trust interest on that date)—\$114x; and for the December 10, 2007, sale: \$116x—1.00 (cash held for distribution per trust interest on that date)—\$115x);

(D) In the case of a purchasing TIH, an amount equal to the amount of cash held for distribution per trust interest at the time the TIH purchased its trust interest, multiplied by the number of trust interests purchased; that is for *S*, \$2.35x (\$1.35x with respect to the September 30, 2007, sale and \$1x with respect to the December 10, 2007, sale);

(E) All amounts of trust sales proceeds distributed to the TIH for the calendar year; that is for *J*, *A*, and *S*, \$100. (\$100 each, with respect to the June 15, 2007, sale of assets by Trust, and \$0 each, with respect to the December 12, 2007, sale of assets by Trust).

(2) *Step two: The brokers apply the factors provided by Trustee to determine the Trust's income and expenses that are attributable to J, A, and S.* The amounts of each item of income (other than OID) and expense that are attributable to *J*, *A*, and *S* are determined by multiplying the factor for that type of income or expense by the total amount of NMWHFIT distributions attributable to *J*, *A*, and *S* as follows:

(i) *Application of factor for ordinary dividends.* The amount of ordinary dividend income attributable to *J* is \$17.89x, to *A* is \$18.82x, and to *S* is \$19.54x. The brokers determine these amounts by multiplying the total amount of NMWHFIT distributions attributable to *J*, *A*, and *S* (\$51.39x, \$54.06x, and \$56.13x, respectively) by the factor for ordinary dividends (0.3481).

(ii) *Application of factor for qualified dividend income.* The amount of qualified dividend income attributable to *J* is \$38.07x, to *A* is \$40.04x, and to *S* is \$41.58x. The brokers determine these amounts by multiplying the total amount of NMWHFIT distributions attributable to *J*, *A*, and *S* (\$51.39x, \$54.06x, and \$56.13x, respectively) by the factor for qualified dividends (0.7407).

(iii) *Application of factor for interest income.* The amount of interest income attributable to *J* is \$1.14x, to *A* is \$1.20x, and to *S* is \$1.25x. The brokers determine these amounts by multiplying the total amount of NMWHFIT distributions attributable to *J*, *A*, and *S* (\$51.39x, \$54.06x, and \$56.13x, respectively) by the factor for interest (0.0222).

(iv) *Application of factor for affected expenses.* The amount of affected expenses attributable to *J* is \$4.28x, to *A* is \$4.50x, and to *S* is \$4.68x. The brokers determine these amounts by multiplying the total amount of NMWHFIT distributions attributable to *J*, *A*,

and *S* (\$51.39x, \$54.06x, and \$56.13x, respectively) by the factor for affected expenses (0.0833).

(3) *Brokers reporting of sales and dispositions of trust assets—(i) Determining the amount of trust sales proceeds to be reported on Form 1099 for J, A, and S.* The amount of trust sales proceeds to be reported on Form 1099 with respect to *J* is \$108.13x, to *A* is \$111.62x, and to *S* is \$113.94x. To determine these amounts, the brokers aggregate the amount of trust sales proceeds attributable to *J*, *A*, and *S* for each date on which Trust sold or disposed of assets. The brokers determine the amount of trust sales proceeds to be reported with respect to the June 15, 2007, asset sale by multiplying the number of trust interests held by *J* (10), *A* (10) and *S* (10) on that date by the trust sales proceeds received per trust interest on that date (\$10x). The brokers determine the amount of trust sales proceeds to be reported with respect to the December 12, 2007, asset sale by multiplying the number of trust interests held by *J* (7), *A* (10) and *S* (12) on that date by the trust sales proceeds received per trust interest on that date (\$1.1616x).

(ii) *Information provided on the tax information statements furnished to J, A, and S.* The tax information statements furnished to *J*, *A*, and *S* must include the dates of each sale or disposition (June 15, 2007, and December 12, 2007); the amount of trust sales proceeds per trust interest received on those dates (\$10.00x and \$1.1616x, respectively); and, the percentage of Trust sold or disposed of on that date (20% and 2%, respectively).

(4) *Reporting redemptions.* Broker1 reports on Form 1099 and on the written tax information statement furnished to *J* that *J* received \$115x in redemption asset proceeds for the calendar year.

(5) *Reporting sales of trust interests on the secondary market.* Broker1 reports on *J*'s two sales of trust interests. With respect to the sale on September 30, 2007, the sale asset proceeds equals \$114x (\$115.35x sale proceeds—\$1.35x cash held for distribution on that date) and with respect to the sale on December 10, 2007, the sale asset proceeds equal \$115x (\$116x sale proceeds—\$1x cash held for distribution on that date). Broker1 reports these amounts on Form 1099 and on the tax information statement furnished to *J*.

(g) *Safe Harbor for certain WHMTs—(1) Safe harbor for trustee of certain WHMTs for reporting information—(i) In general.* The trustee of a WHMT that meets the requirements of paragraph (g)(1)(ii) of this section is deemed to satisfy paragraph (c)(1)(i) of this section, if the trustee calculates and provides WHFIT information in the manner described in this paragraph (g) and provides a statement to the requesting person giving

notice that information has been calculated in accordance with this paragraph (g)(1).

(ii) *Requirements.* A WHMT must meet the following requirements—

(A) The WHMT must make monthly distributions of the income and principal payments received by the WHMT to its TIHs;

(B) All trust interests in the WHMT must represent the right to receive an equal pro-rata share of both the income and the principal payments received by the WHMT on the mortgages it holds (for example, a WHMT that holds or issues trust interests that qualify as stripped interests under section 1286 may not report under this safe harbor);

(C) The WHMT must—

(1) Report under this paragraph (g)(1)(ii) for the life of the WHMT; or

(2) If the WHMT has a start-up date before January 1, 2007, the WHMT must begin reporting under this paragraph (g)(1)(ii) as of January 1, 2007, and must continue to report under this paragraph for the life of the WHMT;

(D) The WHMT must calculate all items subject to the safe harbor consistent with the safe harbor;

(E) The assets of the WHMT must be limited to—

(1) Mortgages with uniform characteristics;

(2) Reasonably required reserve funds; and

(3) Amounts received on mortgages or reserve funds and held for distribution to TIHs; and

(F) The aggregate outstanding principal balance (as defined in paragraph (g)(1)(iii)(D) of this section) as of the WHMT's start-up date must equal the aggregate of the original face amounts of all issued trust interests.

(iii) *Reporting WHMT income, expenses, non pro-rata partial principal payments, and sales and dispositions under the safe harbor.* A trustee must comply with each step provided in this paragraph (g)(1)(iii).

(A) *Step One: Determine monthly pool factors.* The trustee must, for each month of the calendar year and for January of the following calendar year, calculate and provide the ratio (expressed as a decimal carried to at least eight places and called a *pool factor*) of—

(1) The amount of the aggregate outstanding principal balance of the WHMT as of the first business day of the month; to

(2) The amount of the aggregate outstanding principal balance of the WHMT as of the start-up date.

(B) *Step Two: Determine monthly expense factors.* For each month of the calendar year and for each item of expense paid by the WHMT during that month, the trustee must calculate and provide the ratio (expressed as a decimal carried to at least eight places and called an *expense factor*) of—

(1) The gross amount, for the month, of each item of expense; to

(2) The amount that represents the aggregate outstanding principal balance of the WHMT as of the start-up date, divided by 1,000.

(C) *Step Three: Determine monthly income factors.* For each month of the calendar year and for each item of gross income earned by the WHMT during that month, the trustee must calculate and provide the ratio (expressed as a decimal carried to at least eight places and called an *income factor*) of—

(1) The gross amount, for the month, of each item of income, to

(2) The amount that represents the aggregate outstanding principal balance of the WHMT as of the start-up date, divided by 1,000.

(D) *Definition of aggregate outstanding principal balance.* For purposes of this paragraph (g)(1)(iii), the amount of the aggregate outstanding principal balance of a WHMT is the aggregate of—

(1) The outstanding principal balance of all mortgages held by the WHMT;

(2) The amounts received on mortgages as principal payments and held for distribution by the WHMT; and

(3) The amount of the reserve fund (exclusive of undistributed income).

(iv) *Reporting OID information under the safe harbor—(A) Reporting OID prior to the issuance of final regulations under section 1272(a)(6)(C)(iii)—(1)* For calendar years prior to the effective date of final regulations under section 1272(a)(6)(C)(iii), the trustee must provide, for each month during the calendar year, the aggregate daily accrual of OID per \$1,000 of aggregate outstanding principal balance as of the

start-up date (daily portion). For purposes of this paragraph (g)(1)(iv), the daily portion of OID is determined by allocating to each day of the month its ratable portion of the excess (if any) of—

(i) The sum of the present value (determined under section 1272(a)(6)(B)) of all remaining payments under the mortgages held by the WHMT at the close of the month, and the payments during the month of amounts included in the stated redemption price of the mortgages, over

(ii) The aggregate of each mortgage's adjusted issue price as of the beginning of the month.

(2) In calculating the daily portion of OID, the trustee must use the prepayment assumption used in pricing the original issue of trust interests. If the WHMT has a start-up date prior to January 24, 2006, and the trustee, after a good faith effort to ascertain that information, does not know the prepayment assumption used in pricing the original issue of trust interests, the trustee may use any reasonable prepayment assumption to calculate OID provided it continues to use the same prepayment assumption consistently thereafter.

(B) *Reporting OID after the issuance of final regulations under section 1272(a)(6)(C)(iii).* [Reserved]

(v) *Reporting market discount information under the safe harbor—(A) Reporting market discount information prior to the issuance of final regulations under sections 1272(a)(6)(C)(iii) and 1276(b)(3).* For calendar years prior to the effective date of final regulations under sections 1272(a)(6)(C)(iii) and 1276(b)(3), the trustee must provide—

(1) In the case of a WHMT holding mortgages issued with OID, the ratio (expressed as a decimal carried to at least eight places) of—

(i) The OID accrued during the month (calculated in accordance with paragraph (g)(1)(iv) of this section); to

(ii) The total remaining OID as of the beginning of the month (as determined under paragraph (g)(1)(v)(A)(3) of this section); or

(2) In the case of a WHMT holding mortgages issued without OID, the ratio (expressed as a decimal carried to at least eight places) of—

(i) The amount of stated interest paid to the WHMT during the month; to

(ii) The total amount of stated interest remaining to be paid to the WHMT as of the beginning of the month (as determined under paragraph (g)(1)(v)(A)(3) of this section).

(3) *Computing the total amount of stated interest remaining to be paid and the total remaining OID at the beginning of the month.* To compute the total amount of stated interest remaining to be paid to the WHMT as of the beginning of the month and the total remaining OID as of the beginning of the month, the trustee must use the prepayment assumption used in pricing the original issue of trust interests. If the WHMT has a start-up date prior to January 24, 2006, and the trustee, after a good faith effort to ascertain that information, does not know the prepayment assumption used in pricing the original issue of trust interests, the trustee may use any reasonable prepayment assumption to calculate these amounts provided it continues to use the same prepayment assumption consistently thereafter.

(vi) *Reporting bond premium information under the safe harbor.* [Reserved]

(2) *Use of information provided by a trustee under the safe harbor—(i) In general.* If a trustee reports WHMT items in accordance with paragraph (g)(1) of this section, the information provided with respect to those items on the Forms 1099 required to be filed with the IRS under paragraph (d) of this section and on the statement required to be furnished to the TIH under paragraph (e) of this section must be determined as provided in this paragraph (g)(2).

(ii) *Reporting WHMT income, expenses, non pro-rata partial principal payments, and sales and dispositions under the safe harbor.* The amount of each item of income, the amount of each item of expense, and the combined amount of non pro-rata partial principal payments and trust sales proceeds that are attributable to a TIH for each month of the calendar year must be computed as follows:

(A) *Step One: Determine the aggregate of the non pro-rata partial principal payments and trust sales proceeds that are attributable to the TIH for the calendar year.* For each month of the calendar

year that a trust interest was held on the record date—

(1) *Determine the monthly amounts per trust interest.* The trustee or middleman must determine the aggregate amount of non pro-rata partial principal payments and the trust sales proceeds that are attributable to each trust interest for each month by multiplying—

(i) The original face amount of the trust interest; by

(ii) The difference between the pool factor for the current month and the pool factor for the following month.

(2) *Determine the amount for the calendar year.* The trustee or middleman must multiply the monthly amount per trust interest by the number of trust interests held by the TIH on the record date of each month. The trustee or middleman then must aggregate these monthly amounts, and report the aggregate amount on the Form 1099 filed with the IRS and on the tax information statement furnished to the TIH as trust sales proceeds. No other information is required to be reported to the IRS or the TIH to satisfy the requirements of paragraphs (d) and (e) of this section under this paragraph (g) with respect to sales and dispositions and non pro-rata partial principal payments.

(B) *Step Two: Determine the amount of each item of expense that is attributable to a TIH—*(1) *Determine the monthly amounts per trust interest.* For each month of the calendar year that a trust interest was held on the record date, the trustee or middleman must determine the amount of each item of expense that is attributable to each trust interest by multiplying—

(i) The original face amount of the trust interest, divided by 1000; by

(ii) The expense factor for that month and that item of expense.

(2) *Determine the amount for the calendar year.* The trustee or middleman must multiply the monthly amount of each item of expense per trust interest by the number of trust interests held by the TIH on the record date of each month. The trustee or middleman then must aggregate the monthly amounts for each item of expense to determine the total amount of each item of expense that is attributable to the TIH for the calendar year.

(C) *Step Three: Determine the amount of each item of income that is attributable to the TIH for the calendar year—*(1) *Determine the monthly amounts per trust interest.* For each month of the calendar year that a trust interest was held on the record date, the trustee or middleman must determine the amount of each item of income that is attributable to each trust interest by multiplying—

(i) The original face amount of the trust interest, divided by 1,000; by

(ii) The income factor for that month and that item of income.

(2) *Determine the amount for the calendar year.* The trustee or middleman must multiply the monthly amount of each item of income per trust interest by the number of trust interests held by the TIH on the record date of each month. The trustee or middleman then must aggregate the monthly amounts for each item of income to determine the total amount of each item of income that is attributable to the TIH for the calendar year.

(D) *Definitions for this paragraph (g)(2).* For purposes of this paragraph (g)(2)(ii)—

(1) *The record date* is the date used by the WHMT to determine the owner of the trust interest for the purpose of distributing the payment for the month.

(2) *The original face amount of the trust interest* is the original principal amount of a trust interest on its issue date.

(iii) *Reporting OID information under the safe harbor.* With respect to each month, trustee or middleman must determine the amount of OID that is attributable to each trust interest held by a TIH by multiplying—

(A) The product of the OID factor multiplied by the original face amount of the trust interest, divided by 1,000; by

(B) The number of days during the month that the TIH held the trust interest.

(iv) *Requirement to provide market discount information under the safe harbor.* The trustee or middleman must provide the market discount information in accordance with paragraph (g)(1)(v) of this section to the TIH in, or with, the written statement required to be

furnished to the TIH under paragraph (e) of this section.

(v) *Requirement to provide bond premium information under the safe harbor.* [Reserved]

(3) *Example of safe harbor in paragraph (g)(1) of this section.* The following example illustrates the use of the factors in this paragraph (g) to calculate and provide WHMT information:

Example. (i) *Facts*—(A) *In general.* X is a WHMT. X's start-up date is January 1, 2007. As of that date, X's assets consist of 100 15-year mortgages, each having an unpaid principal balance of \$125,000 and a fixed, annual interest rate of 7.25 percent. None of the mortgages were issued with OID. X's TIHs are entitled to monthly, pro-rata distributions of the principal payments received by X. X's TIHs are also entitled to monthly, pro-rata distributions of the interest earned on the mortgages held by X, reduced by expenses. Trust interests are issued in increments of \$5,000 with a \$25,000 minimum. The prepayment assumption used in pricing the original issue of trust interests is six percent. Broker holds a trust interest in X, with an original face amount of \$25,000, in street name, for C during the entire 2007 calendar year.

(B) *Trust events during the 2007 calendar year.* During the 2007 calendar year, X collects all interest and principal payments when due and makes all monthly distributions when due. One mortgage is repurchased from X in July 2007 for \$122,249, the mortgage's unpaid principal balance plus accrued, but unpaid, interest at the time. During November 2007, another mortgage is prepaid in full. X earns \$80 interest income each month from the temporary investment of X's funds pending distribution to the TIHs. All of X's expenses are affected expenses. The aggregate outstanding principal balance of X's mortgages, X's interest income, and X's expenses, for each month of the 2007 calendar year, along with the aggregate outstanding principal balance of X as of January 2008, are as follows:

| Month | Principal balance | Income | Expenses |
|-----------------|-------------------|----------|----------|
| January | \$12,500,000 | \$75,601 | \$5,288 |
| February | 12,461,413 | 75,368 | 5,273 |
| March | 12,422,593 | 75,133 | 5,256 |
| April | 12,383,538 | 74,897 | 5,240 |
| May | 12,344,247 | 74,660 | 5,244 |
| June | 12,304,719 | 74,421 | 5,207 |
| July | 12,264,952 | 74,181 | 5,191 |
| August | 12,102,696 | 73,200 | 5,122 |
| September | 12,062,849 | 72,960 | 5,106 |
| October | 12,022,762 | 72,718 | 5,089 |
| November | 11,982,432 | 72,474 | 5,073 |
| December | 11,821,234 | 71,500 | 5,006 |
| January | 11,780,829 | ..... | ..... |

(ii) *Trustee reporting.* (A) Trustee, X's fiduciary, comes within the safe harbor of paragraph (g)(1)(ii) of this section by providing the following information to requesting persons:

| Month | Pool factor | Income factor | Expense factor |
|-----------------|-------------|---------------|----------------|
| January | 1.00000000 | 6.04806667 | 0.42304000 |
| February | 0.99691304 | 6.02941628 | 0.42184000 |
| March | 0.99380744 | 6.01065328 | 0.42048000 |
| April | 0.99068304 | 5.99177670 | 0.41920000 |
| May | 0.98753976 | 5.97278605 | 0.41952000 |
| June | 0.98437752 | 5.95368085 | 0.41656000 |
| July | 0.98119616 | 5.93446013 | 0.41528000 |
| August | 0.96821564 | 5.85603618 | 0.40976000 |
| September | 0.96502792 | 5.83677704 | 0.40848000 |
| October | 0.96182096 | 5.81740161 | 0.40712000 |
| November | 0.95859459 | 5.79790896 | 0.40584000 |
| December | 0.94569875 | 5.71999659 | 0.40048000 |
| January | 0.94246631 | ..... | ..... |

(B) Trustee determines this information as follows:

(1) *Step One: Trustee determines monthly pool factors.* Trustee calculates and provides X's pool factor for each month of the 2007 calendar year. For example, for the month of January 2007 the pool factor is 1.0, which represents the ratio of—

(i) The amount that represents the aggregate outstanding principal balance of X (\$12,500,000) as of the first business day of January; divided by

(ii) The amount that represents the aggregate outstanding principal balance of X (\$12,500,000) as of the start-up date.

(2) *Step Two: Trustee determines monthly expense factors.* Trustee calculates and provides the expense factors for each month of the 2007 calendar year. During 2007, X has only affected expenses, and therefore, will have only one expense factor for each month. For example, the expense factor for the month of January 2007 is 0.42304000, which represents the ratio of—

(i) The gross amount of expenses paid during January by X (\$5,288); divided by

(ii) The amount that represents the aggregate outstanding principal balance of X as of the start-up date (\$12,500,000) divided by 1,000 (\$12,500).

(3) *Step Three: Trustee determines monthly income factors.* Trustee calculates and provides the income factors for each month of the 2007 calendar year. During 2007, X has only interest income, and therefore, will have only one income factor for each month. For example, the income factor for the month of January 2007 is 6.04806667, which represents the ratio of—

(i) The gross amount of interest income earned by X during January (\$75,601); divided by

(ii) The amount that represents that aggregate outstanding principal balance of X as of the start-up date (\$12,500,000), divided by 1,000 (\$12,500).

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(4) *Step Four: Trustee calculates and provides monthly market discount fractions.* Trustee calculates and provides a market discount fraction for each month of the 2007 calendar year using a prepayment assumption of 6% and a stated interest rate of 7.25%.

(iii) *Broker's use of the information provided by Trustee.* (A) Broker uses the information provided by Trustee under paragraph (g) of this section to determine that the following trust items are attributable to C:

| Month | Aggregate trust sales proceeds and non pro-rata partial principal payments | Affected expenses | Gross interest income |
|-----------------|--|-------------------|-----------------------|
| January | \$77.17 | \$10.58 | \$151.20 |
| February | 77.64 | 10.55 | 150.74 |
| March | 78.11 | 10.51 | 150.27 |
| April | 78.58 | 10.48 | 149.79 |
| May | 79.06 | 10.49 | 149.32 |
| June | 79.53 | 10.41 | 148.84 |
| July | 324.51 | 10.38 | 148.36 |
| August | 79.69 | 10.24 | 146.40 |
| September | 80.17 | 10.21 | 145.92 |
| October | 80.66 | 10.18 | 145.43 |
| November | 322.40 | 10.15 | 144.95 |
| December | 80.81 | 10.01 | 143.00 |
| Total | 1438.33 | 124.19 | 1774.22 |

(B) Broker determines this information as follows:

(1) *Step One: Broker determines the amount of the non pro-rata partial principal payments and trust sales proceeds received by X that are attributable to C for the 2007 calendar year.* Broker determines the amount of the non pro-rata partial principal payments and trust sales proceeds received by X that are attributable to C for each month of the 2007 calendar year. For example, for the month of January, Broker determines that the amount of principal receipts and the amount of trust sales proceeds that are attributable to C is \$77.17. Broker determines this by multiplying the original face amount of C's trust interest (\$25,000) by 0.00308696, the difference between the pool factor for January 2007 (1.00000000) and the pool factor for the following month of February 2007 (0.99691304). Broker reports the aggregate of the monthly amounts of non pro-rata partial principal payments and trust sales proceeds that are attributable to C for the 2007 calendar year as trust sales proceeds on the Form 1099 filed with the IRS.

(2) *Step Two: Broker applies the expense factors provided by Trustee to determine the amount of expenses that are attributable to C for the 2007 calendar year.* Broker determines the amount of X's expenses that are attributable to C for each month of the calendar year. For example, for the month of January 2007, Broker determines that the amount of expenses attributable to C is \$10.58. Broker determines this by multiplying the original face amount of C's trust interest (\$25,000), di-

vided by 1,000 (\$25) by the expense factor for January 2007 (0.42304000). Broker determines the expenses that are attributable to C for the 2007 calendar year by aggregating the monthly amounts.

(3) *Step Three: Broker applies the income factors provided by Trustee to determine the amount of gross interest income attributable to C for the 2007 calendar year.* Broker determines the amount of gross interest income that is attributable to C for each month of the calendar year. For example, for the month of January 2007, Broker determines that the amount of gross interest income attributable to C is \$151.20. Broker determines this by multiplying the original face amount of C's trust interest (\$25,000), divided by 1,000 (\$25), by the income factor for January 2007 (6.04806667). Broker determines the amount of the gross interest income that is attributable to C for the 2007 calendar year by aggregating the monthly amounts.

(4) *Step Four: Broker provides market discount information to C.* Broker provides C with the market discount fractions calculated and provided by the trustee of X under paragraph (g)(3)(ii)(D) of this section.

(h) *Additional safe harbors—(1) Temporary safe harbor for WHMTs—(i) Application.* Pending the issuance of additional guidance, the safe harbor in this paragraph applies to trustees and middlemen of WHMTs that are not eligible to report under the WHMT safe harbor in paragraph (g) of this section because they hold interests in another WHFIT, in a REMIC, or hold or issue stripped interests.

(ii) *Safe harbor.* A trustee is deemed to satisfy the requirements of paragraph (c) of this section, if the trustee calculates and provides trust information in a manner that enables a requesting person to provide trust information to a beneficial owner of a trust interest that enables the owner to reasonably accurately report the tax consequences of its ownership of a trust interest on its federal income tax return. Additionally, to be deemed to satisfy the requirements of paragraph (c) of this section, the trustee must calculate and provide trust information regarding market discount and OID by any reasonable manner consistent with section 1272(a)(6). A middleman or a trustee may satisfy its obligation to furnish information to the IRS under paragraph (d) of this section and to the trust interest holder under paragraph (e) of this section by providing information consistent with the

information provided under this paragraph by the trustee.

(2) *Additional safe harbors provided by other published guidance.* The IRS and the Treasury Department may provide additional safe harbor reporting procedures for complying with this section or a specific paragraph of this section by other published guidance (see § 601.601(d)(2) of this chapter).

(i) [Reserved]

(j) *Requirement that middlemen furnish information to beneficial owners that are exempt recipients and noncalendar-year beneficial owners—(1) In general.* A middleman that holds a trust interest on behalf of, or for the account of, either a beneficial owner that is an exempt recipient defined in paragraph (b)(7) of this section or a noncalendar-year beneficial owner, must provide to such beneficial owner, upon request, the information provided by the trustee to the middleman under paragraph (c) of this section.

(2) *Time for providing information.* The middleman must provide the requested information to any beneficial owner making a request under paragraph (h)(1) of this section on or before the later of the 44th day after the close of the calendar year for which the information was requested, or the day that is 28 days after the receipt of the request. A middleman must provide information with respect to a WHFIT holding an interest in another WHFIT, or a WHFIT holding an interest in a REMIC, on or before the later of the 58th day after the close of the calendar year for which the information was requested, or the 42nd day after the receipt of the request.

(3) *Manner of providing information.* The requested information must be provided—

(i) By written statement sent by first class mail to the address provided by the person requesting the information;

(ii) By electronic mail provided that the person requesting the information requests that the middleman furnish the information by electronic mail and the person furnishes an electronic address;

(iii) At an Internet website of the middleman or the trustee, provided that the beneficial owner requesting the information is notified that the re-

quested information is available at the Internet website and is furnished the address of the site; or

(iv) Any other manner agreed to by the middleman and the beneficial owner requesting the information.

(4) *Clearing organization.* A clearing organization described in § 1.163-5(c)(2)(i)(D)(8) is not required to furnish information to exempt recipients or non-calendar-year TIHs under this paragraph (h).

(k) *Coordination with other information reporting rules.* In general, in cases in which reporting is required for a WHFIT under both this section and subpart B, part III, subchapter A, chapter 61 of the Internal Revenue Code (Sections 6041 through 6050S) (Information Reporting Sections), the reporting rules for WHFITs under this section must be applied. The provisions of the Information Reporting Sections and the regulations thereunder are incorporated into this section as applicable, but only to the extent that such provisions are not inconsistent with the provisions of this section.

(l) *Backup withholding requirements.* Every trustee and middleman required to file a Form 1099 under this section is a payor within the meaning of § 31.3406(a)-2, and must backup withhold as required under section 3406 and any regulations thereunder.

(m) *Penalties for failure to comply—(1) In general.* Every trustee or middleman who fails to comply with the reporting obligations imposed by this section is subject to penalties under sections 6721, 6722, and any other applicable penalty provisions.

(2) *Penalties not imposed on trustees and middlemen of certain WHMTs for failure to report OID.* Penalties will not be imposed as a result of a failure to provide OID information for a WHMT that has a start-up date on or after August 13, 1998 and on or before January 24, 2006, if the trustee of the WHMT does not have the historic information necessary to provide this information and the trustee demonstrates that it has attempted in good faith, but without success, to obtain this information. For purposes of calculating a market discount fraction under paragraph

(g)(1)(v) of this section, for a WHMT described in this paragraph, it may be assumed that the WHMT is holding mortgages that were issued without OID. A trustee availing itself of this paragraph must include a statement to that effect when providing information to requesting persons under paragraph (c) of these regulations.

(n) *Effective date.* These regulations are applicable January 1, 2007. Trustees must calculate and provide trust information with respect to the 2007 calendar year and all subsequent years consistent with these regulations. Information returns required to be filed with the IRS and the tax information statements required to be furnished to trust interest holders after December 31, 2007 must be consistent with these regulations.

[T.D. 9241, 71 FR 4009, Jan. 24, 2006, as amended by T.D. 9279, 71 FR 43971, Aug. 3, 2006; T.D. 9308, 71 FR 78356, Dec. 29, 2006]

§ 1.672(a)-1 Definition of adverse party.

(a) Under section 672(a) an adverse party is defined as any person having a substantial beneficial interest in a trust which would be adversely affected by the exercise or nonexercise of a power which he possesses respecting the trust. A trustee is not an adverse party merely because of his interest as trustee. A person having a general power of appointment over the trust property is deemed to have a beneficial interest in the trust. An interest is a substantial interest if its value in relation to the total value of the property subject to the power is not insignificant.

(b) Ordinarily, a beneficiary will be an adverse party, but if his right to share in the income or corpus of a trust is limited to only a part, he may be an adverse party only as to that part. Thus, if A, B, C, and D are equal income beneficiaries of a trust and the grantor can revoke with A's consent, the grantor is treated as the owner of a portion which represents three-fourths of the trust; and items of income, deduction, and credit attributable to that portion are included in determining the tax of the grantor.

(c) The interest of an ordinary income beneficiary of a trust may or may

not be adverse with respect to the exercise of a power over corpus. Thus, if the income of a trust is payable to A for life, with a power (which is not a general power of appointment) in A to appoint the corpus to the grantor either during his life or by will, A's interest is adverse to the return of the corpus to the grantor during A's life, but is not adverse to a return of the corpus after A's death. In other words, A's interest is adverse as to ordinary income but is not adverse as to income allocable to corpus. Therefore, assuming no other relevant facts exist, the grantor would not be taxable on the ordinary income of the trust under section 674, 676, or 677, but would be taxable under section 677 on income allocable to corpus (such as capital gains), since it may in the discretion of a nonadverse party be accumulated for future distribution to the grantor. Similarly, the interest of a contingent income beneficiary is adverse to a return of corpus to the grantor before the termination of his interest but not to a return of corpus after the termination of his interest.

(d) The interest of a remainderman is adverse to the exercise of any power over the corpus of a trust, but not to the exercise of a power over any income interest preceding his remainder. For example, if the grantor creates a trust which provides for income to be distributed to A for 10 years and then for the corpus to go to X if he is then living, a power exercisable by X to revest corpus in the grantor is a power exercisable by an adverse party; however, a power exercisable by X to distribute part or all of the ordinary income to the grantor may be a power exercisable by a nonadverse party (which would cause the ordinary income to be taxed to the grantor).

§ 1.672(b)-1 Nonadverse party.

A *nonadverse party* is any person who is not an adverse party.

§ 1.672(c)-1 Related or subordinate party.

Section 672(c) defines the term "related or subordinate party". The term, as used in sections 674(c) and 675(3), means any nonadverse party who is the grantor's spouse if living with the grantor; the grantor's father, mother,